

AMENDED IN SENATE SEPTEMBER 4, 2003

AMENDED IN SENATE JULY 8, 2003

AMENDED IN ASSEMBLY MAY 13, 2003

AMENDED IN ASSEMBLY MAY 1, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1151

Introduced by Assembly Member Dymally

February 21, 2003

An act to amend Section 911.4 of, and to add Section 6252.6 to, the Government Code, to amend Section 1527.6 of the Health and Safety Code, and to amend Section 16501.1 of, and to add Section 16000.1 to, the Welfare and Institutions Code, relating to foster care.

LEGISLATIVE COUNSEL'S DIGEST

AB 1151, as amended, Dymally. Foster care.

Existing law requires a claim for personal injury against a public entity, which includes the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state, or against an employee of a public entity, to be presented not later than 6 months after accrual of the cause of action. Existing law provides that when a claim is not filed within the 6-month period, an application for leave to present the claim within a reasonable time not to exceed one year after the accrual of the cause of action may be filed in accordance with specified provisions. Existing law provides that the time during which a person is detained or adjudged a dependent child of the juvenile

court pursuant to certain provisions of law shall, under certain circumstances, not be counted in that one-year period.

This bill would provide that the time during which a minor is adjudged to be a dependent child of the juvenile court, pursuant to certain provisions of law, shall not be counted in that one-year period if the minor is without a guardian ad litem or conservator for purposes of filing civil actions.

Existing law establishes the Foster Family Home and Small Family Home Insurance Fund within the State Department of Social Services to pay on behalf of foster family homes and small family homes, claims of foster children, their parents, guardians, and guardians ad litem resulting from occurrences peculiar to the foster-care relationship and the provision of foster-care services. Existing law requires that any claim against the fund filed by a foster parent or a 3rd party be submitted to the fund within the applicable period of limitation for the appropriate civil action underlying the claim. Existing law provides that if a person entitled to bring an action under specified laws is, at the time the cause of action accrued, either a minor or insane, the time of this disability is not part of the time limited for the commencement of the action.

This bill would provide that a claim against the fund filed by a foster parent or 3rd party is subject to the latter provision described above that extends the limitation of time for the commencement of an action for a minor.

Under existing law, juvenile court records are generally confidential, with certain limited exceptions. Existing law requires the release to the public of juvenile case files that pertain to a deceased dependent child of the juvenile court, pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Existing law authorizes the presiding judge of the juvenile court to issue an order prohibiting or limiting access to the juvenile case file under certain circumstances.

This bill would provide that after the death of a minor foster child, designated information regarding that child shall be subject to disclosure pursuant to the California Public Records Act.

Existing law requires that if a child is removed from the physical custody of his or her parents, preferential consideration be given to a request by a relative of the child for placement of the child with the relative.

Existing law sets forth the policy of the state that all children placed in foster care have certain rights, and requires social workers and



facilities providing social services to children in foster care to provide those children with information regarding those rights.

This bill would declare legislative intent that nothing in the decision of the California Court of Appeal in *County of Los Angeles v. Superior Court of Los Angeles: Real Party in Interest Terrell R.* (2002) 102 Cal.App.4th 627, shall be held to change the standards of liability or immunity for injuries to children in protective custody, as they existed prior to that decision, and to confirm the state’s duty to comply with all requirements under certain federal law that are relevant to the protection and welfare of children in foster care.

Existing law relating to the establishment of a case plan for a child in foster care expresses a policy that these children be in a safe home or out-of-home setting.

This bill would specify that “safe” for these purposes means a home or setting that is free from abuse, as described in specified existing law. The bill would make a legislative finding that the definition of safe contained in the bill is declaratory of existing law.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. This act shall be known and may be cited as the
2 Duty to Foster Children Reaffirmation Act.

3 SEC. 2. Section 911.4 of the Government Code is amended to
4 read:

5 911.4. (a) When a claim that is required by Section 911.2 to
6 be presented not later than six months after the accrual of the cause
7 of action is not presented within that time, a written application
8 may be made to the public entity for leave to present that claim.

9 (b) The application shall be presented to the public entity as
10 provided in Article 2 (commencing with Section 915) within a
11 reasonable time not to exceed one year after the accrual of the
12 cause of action and shall state the reason for the delay in presenting
13 the claim. The proposed claim shall be attached to the application.

14 (c) In computing the one-year period under subdivision (b), the
15 following shall apply:

16 (1) The time during which the person who sustained the alleged
17 injury, damage, or loss as a minor shall be counted, but the time



1 during which he or she is mentally incapacitated and does not have
2 a guardian or conservator of his or her person shall not be counted.

3 (2) The time shall not be counted during which the person is
4 detained or adjudged to be a dependent child of the juvenile court
5 under the Arnold-Kennick Juvenile Court Law (Chapter 2
6 (commencing with Section 200) of Part 1 of Division 2 of the
7 Welfare and Institutions Code), if both of the following conditions
8 exist:

9 (A) The person is in the custody and control of an agency of the
10 public entity to which a claim is to be presented.

11 (B) The public entity or its agency having custody and control
12 of the minor is required by statute or other law to make a report of
13 injury, abuse, or neglect to either the juvenile court or the minor's
14 attorney, and that entity or its agency fails to make this report
15 within the time required by the statute or other enactment, with this
16 time period to commence on the date on which the public entity or
17 its agency becomes aware of the injury, neglect, or abuse. In
18 circumstances where the public entity or its agency makes a late
19 report, the claim period shall be tolled for the period of the delay
20 caused by the failure to make a timely report.

21 (3) The time shall not be counted during which a minor is
22 adjudged to be a dependent child of the juvenile court under the
23 Arnold-Kennick Juvenile Court Law (Chapter 2 (commencing
24 with Section 200) of Part 1 of Division 2 of the Welfare and
25 Institutions Code), if the minor is without a guardian ad litem or
26 conservator for purposes of filing civil actions.

27 SEC. 3. Section 6252.6 is added to the Government Code, to
28 read:

29 6252.6. Notwithstanding paragraph (2) of subdivision (a) of
30 Section 827 of the Welfare and Institutions Code, after the death
31 of a foster child who is a minor, the name, date of birth, and date
32 of death of the child shall be subject to disclosure *by the county*
33 *child welfare agency* pursuant to this chapter.

34 SEC. 4. Section 1527.6 of the Health and Safety Code is
35 amended to read:

36 1527.6. (a) Any claim against the fund shall be filed with the
37 fund in accordance with claims procedures and on forms
38 prescribed by the State Department of Social Services or its
39 designated contract agency.



1 (b) Any claim against the fund filed by a foster parent or a third
2 party shall be submitted to the fund within the applicable period
3 of limitations for the appropriate civil action underlying the claim,
4 subject to subdivision (a) of Section 352 of the Code of Civil
5 Procedure as that section applies to a minor. If a claim is not
6 submitted to the fund within the applicable time, there shall be no
7 recourse against the fund.

8 (c) The department shall approve or reject a claim within 180
9 days after it is presented.

10 (d) No person may bring a civil action against a foster parent
11 for which the fund is liable unless that person has first filed a claim
12 against the fund and the claim has been rejected, or the claim has
13 been filed, approved, and paid, and damages in excess of the
14 payment are claimed.

15 SEC. 5. Section 16000.1 is added to the Welfare and
16 Institutions Code, to read:

17 16000.1. (a) The Legislature finds and declares all of the
18 following:

19 (1) The state has a ~~special~~ duty to care for and protect the
20 children that the state places into foster care, *and as a matter of*
21 *public policy, the state assumes an obligation of the highest order*
22 *to ensure the safety of children in foster care.*

23 (2) A judicial order establishing jurisdiction over a child placed
24 into foster care supplants or limits parental or previous adult
25 authority.

26 ~~(3) Accordingly, the state assumes an obligation of the highest~~
27 ~~order to ensure the safety of children in foster care.~~

28 (3) *Nothing in this section is intended to change the balance of*
29 *liability between the state and the counties as it existed prior to the*
30 *decision of the California Court of Appeal in County of Los*
31 *Angeles v. Superior Court of Los Angeles: Real Party in Interest*
32 *Terrell R. (2002) 102 Cal.App.4th 627, as established by the*
33 *decision of the California Court of Appeal in Scott v. County of Los*
34 *Angeles (1994) 27 Cal.App.4th 125. Furthermore, nothing in this*
35 *section is intended to increase or decrease the liability of the state*
36 *as it existed prior to the Terrell R. case.*

37 (b) (1) It is the intent of the Legislature that nothing in the
38 decision of the California Court of Appeal in County of Los
39 Angeles v. Superior Court of Los Angeles: Real Party in Interest
40 Terrell R. (2002) 102 Cal.App.4th 627, shall be held to change the



1 standards of liability and immunity for injuries to children in
2 protective custody that existed prior to that decision.

3 (2) It is the intent of the Legislature to confirm the state's duty
4 to comply with all requirements under Part B of Title IV of the
5 Social Security Act (42 U.S.C. Sec. 620 et seq.) and Part E of Title
6 IV of the Social Security Act (42 U.S.C. Sec. 670 et seq.) that are
7 relevant to the protection and welfare of children in foster care.

8 SEC. 6. Section 16501.1 of the Welfare and Institutions Code
9 is amended to read:

10 16501.1. (a) The Legislature finds and declares that the
11 foundation and central unifying tool in child welfare services is the
12 case plan.

13 (b) The Legislature further finds and declares that a case plan
14 ensures that the child receives protection and safe and proper care
15 and case management, and that services are provided to the child
16 and parents or other caretakers as appropriate in order to improve
17 conditions in the parent's home, to facilitate the safe return of the
18 child to a safe home or the permanent placement of the child, and
19 to address the needs of the child while in foster care. A case plan
20 shall be based upon the principles set forth in this section and shall
21 document that a preplacement assessment of the service needs of
22 the child and family, and preplacement preventive services, have
23 been provided, and that reasonable efforts to prevent out-of-home
24 placement have been made. In determining the reasonable services
25 to be offered or provided, the child's health and safety shall be the
26 paramount concerns. Reasonable services shall be offered or
27 provided to make it possible for a child to return to a safe home
28 environment, unless, pursuant to subdivisions (b) and (e) of
29 Section 361.5, the court determines that reunification services
30 shall not be provided. If reasonable services are not ordered, or are
31 terminated, reasonable efforts shall be made to place the child in
32 a timely manner in accordance with the permanent plan and to
33 complete all steps necessary to finalize the permanent placement
34 of the child.

35 (c) When out-of-home placement is used to attain case plan
36 goals, the decision regarding choice of placement shall be based
37 upon selection of a safe setting that is the least restrictive or most
38 familylike and the most appropriate setting that is available and in
39 close proximity to the parent's home, consistent with the selection
40 of the environment best suited to meet the child's special needs and



1 best interest, or both. The selection shall consider, in order of
2 priority, placement with relatives, tribal members, and foster
3 family, group care, and residential treatment pursuant to Section
4 7950 of the Family Code.

5 (d) As used in subdivisions (b) and (c), a home or setting that
6 is “safe” means that the home or setting is free from abuse or
7 neglect, as described in Section 11165.5 of the Penal Code.

8 (e) A written case plan shall be completed within 30 days of the
9 initial removal of the child or of the in-person response required
10 under subdivision (f) of Section 16501 if the child has not been
11 removed from his or her home, or by the date of the dispositional
12 hearing pursuant to Section 358, whichever occurs first. The case
13 plan shall be updated, as the service needs of the child and family
14 dictate. At a minimum, the case plan shall be updated in
15 conjunction with each status review hearing conducted pursuant
16 to Section 366.21, and the hearing conducted pursuant to Section
17 366.26, but no less frequently than once every six months. Each
18 updated case plan shall include a description of the services that
19 have been provided to the child under the plan and an evaluation
20 of the appropriateness and effectiveness of those services.

21 (f) The child welfare services case plan shall be comprehensive
22 enough to meet the juvenile court dependency proceedings
23 requirements pursuant to Article 6 (commencing with Section
24 300) of Chapter 2 of Part 1 of Division 2.

25 (g) The case plan shall be developed as follows:

26 (1) The case plan shall be based upon an assessment of the
27 circumstances that required child welfare services intervention.

28 (2) The case plan shall identify specific goals and the
29 appropriateness of the planned services in meeting those goals.

30 (3) The case plan shall identify the original allegations of abuse
31 or neglect, as defined in Article 2.5 (commencing with Section
32 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the
33 conditions cited as the basis for declaring the child a dependent of
34 the court pursuant to Section 300, or all of these, and the other
35 precipitating incidents that led to child welfare services
36 intervention.

37 (4) The case plan shall include a description of the schedule of
38 the social worker contacts with the child and the family or other
39 caretakers. The frequency of these contacts shall be in accordance
40 with regulations adopted by the State Department of Social



1 Services. If the child has been placed in foster care out of state, the
2 county social worker or a social worker on the staff of the social
3 service agency in the state in which the child has been placed shall
4 visit the child in a foster family home or the home of a relative at
5 least every 12 months and submit a report to the court on each visit.
6 For children in out-of-state group home facilities, visits shall be
7 conducted at least monthly, pursuant to Section 16516.5. At least
8 once every six months, at the time of a regularly scheduled social
9 worker contact with the foster child, the child's social worker shall
10 inform the child of his or her rights as a foster child, as specified
11 in Section 16001.9. The social worker shall provide the
12 information to the child in a manner appropriate to the age or
13 developmental level of the child.

14 (5) When out-of-home services are used, the frequency of
15 contact between the natural parents or legal guardians and the child
16 shall be specified in the case plan. The frequency of those contacts
17 shall reflect overall case goals, and consider other principles
18 outlined in this section.

19 (6) When out-of-home placement is made, the case plan shall
20 include provisions for the development and maintenance of sibling
21 relationships as specified in subdivisions (b), (c), and (d) of
22 Section 16002. If appropriate, when siblings who are dependents
23 of the juvenile court are not placed together, the social worker for
24 each child, if different, shall communicate with each of the other
25 social workers and ensure that the child's siblings are informed of
26 significant life events that occur within their extended family.
27 Unless it has been determined that it is inappropriate in a particular
28 case to keep siblings informed of significant life events that occur
29 within the extended family, the social worker shall determine the
30 appropriate means and setting for disclosure of this information to
31 the child commensurate with the child's age and emotional
32 well-being. These significant life events shall include, but shall not
33 be limited to, the following:

34 (A) The death of an immediate relative.

35 (B) The birth of a sibling.

36 (C) Significant changes regarding a dependent child, unless the
37 child objects to the sharing of the information with his or her
38 siblings, including changes in placement, major medical or mental
39 health diagnoses, treatments, or hospitalizations, arrests, and
40 changes in the permanent plan.



1 (7) When out-of-home placement is made in a foster family
2 home, group home or other child care institution that is either a
3 substantial distance from the home of the child's parent or out of
4 state, the case plan shall specify the reasons why that placement is
5 in the best interest of the child. When an out-of-state group home
6 placement is recommended or made, the case plan shall, in
7 addition, specify compliance with Section 7911.1 of the Family
8 Code.

9 (8) When out-of-home services are used, or when parental
10 rights have been terminated and the case plan is placement for
11 adoption, the case plan shall include a recommendation regarding
12 the appropriateness of unsupervised visitation between the child
13 and any of the child's siblings. This recommendation shall include
14 a statement regarding the child's and the siblings' willingness to
15 participate in unsupervised visitation. If the case plan includes a
16 recommendation for unsupervised sibling visitation, the plan shall
17 also note that information necessary to accomplish this visitation
18 has been provided to the child or to the child's siblings.

19 (9) When out-of-home services are used and the goal is
20 reunification, the case plan shall describe the services to be
21 provided to assist in reunification and the services to be provided
22 concurrently to achieve legal permanency if efforts to reunify fail.
23 The plan shall also consider the importance of developing and
24 maintaining sibling relationships pursuant to Section 16002.

25 (10) When out-of-home services are used, the child has been in
26 care for at least 12 months, and the goal is not adoptive placement,
27 the case plan shall include documentation of the compelling reason
28 or reasons why termination of parental rights is not in the child's
29 best interest. A determination completed or updated within the
30 past 12 months by the department when it is acting as an adoption
31 agency or by a licensed adoption agency that it is unlikely that the
32 child will be adopted, or that one of the conditions described in
33 paragraph (1) of subdivision (c) of Section 366.26 applies, shall be
34 deemed a compelling reason.

35 (11) (A) Parents and legal guardians shall have an opportunity
36 to review the case plan, sign it whenever possible, and then shall
37 receive a copy of the plan. In any voluntary service or placement
38 agreement, the parents or legal guardians shall be required to
39 review and sign the case plan. Whenever possible, parents and



1 legal guardians shall participate in the development of the case
2 plan.

3 (B) Parents and legal guardians shall be advised that, pursuant
4 to Section 1228.1 of the Evidence Code, neither their signature on
5 the child welfare services case plan nor their acceptance of any
6 services prescribed in the child welfare services case plan shall
7 constitute an admission of guilt or be used as evidence against the
8 parent or legal guardian in a court of law. However, they shall also
9 be advised that the parent's or guardian's failure to cooperate,
10 except for good cause, in the provision of services specified in the
11 child welfare services case plan may be used in any hearing held
12 pursuant to Section 366.21 or 366.22 as evidence.

13 (12) The case plan shall be included in the court report and shall
14 be considered by the court at the initial hearing and each review
15 hearing. Modifications to the case plan made during the period
16 between review hearings need not be approved by the court if the
17 casework supervisor for that case determines that the
18 modifications further the goals of the plan. When out-of-home
19 services are used with the goal of family reunification, the case
20 plan shall consider and describe the application of subdivision (b)
21 of Section 11203.

22 (13) When the case plan has as its goal for the child a permanent
23 plan of adoption or placement in another permanent home, it shall
24 include documentation of the steps the agency is taking to find an
25 adoptive family or other permanent living arrangements for the
26 child; to place the child with an adoptive family, an appropriate
27 and willing relative, a legal guardian, or in another planned
28 permanent living arrangement; and to finalize the adoption or legal
29 guardianship. At a minimum, the documentation shall include
30 child specific recruitment efforts, such as the use of state, regional,
31 and national adoption exchanges, including electronic exchange
32 systems, when the child has been freed for adoption.

33 (h) If the court finds, after considering the case plan, that
34 unsupervised sibling visitation is appropriate and has been
35 consented to, the court shall order that the child or the child's
36 siblings, and the child's prospective adoptive parents, if
37 applicable, be provided with information necessary to accomplish
38 this visitation. Nothing in this section shall be construed to require
39 or prohibit the social worker's facilitation, transportation, or
40 supervision of visits between the child and his or her siblings.



1 (i) The case plan documentation on sibling placements
2 required under this section shall not require modification of
3 existing case plan forms until the Child Welfare Services Case
4 Management System is implemented on a statewide basis.

5 (j) The department, in consultation with the County Welfare
6 Directors Association and other advocates, shall develop
7 standards and guidelines for a model relative placement search and
8 assessment process based on the criteria established in Section
9 361.3. These guidelines shall be incorporated in the training
10 described in Section 16206. These model standards and guidelines
11 shall be developed by March 1, 1999.

12 SEC. 7. The Legislature finds and declares that the
13 amendments to Section 16501.1 of the Welfare and Institutions
14 Code made by Section 6 of this act are declaratory of existing law.

