

AMENDED IN ASSEMBLY APRIL 22, 2008

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2338

Introduced by Assembly Member Beall

February 21, 2008

An act to amend Section 1530.8 of the Health and Safety Code, and to amend Sections 319.2 and 361.2 of the Welfare and Institutions Code, relating to foster care.

LEGISLATIVE COUNSEL'S DIGEST

AB 2338, as amended, Beall. Foster care placement: children 12 years of age and younger.

Existing law regulates the licensure and operation by the State Department of Social Services of community care facilities, including those licensed as group homes and temporary shelter care facilities, that provide residential care for foster children. Existing law requires the department to adopt regulations for community care facilities licensed as group homes, and for temporary shelter care facilities that care for designated children who are younger than 6 years of age. Violation of these statutory and regulatory requirements is a misdemeanor.

This bill would extend application of these required regulations to children from 6 to 12 years of age, inclusive, and would make conforming changes. ~~This bill would also prohibit placement of certain foster children 12 years of age and younger in a residential facility or group home more than 30 miles from the residence of the child's parent or guardian, or individual caregiver, as specified.~~

By changing the definition of an existing crime with respect to the regulation of community care facilities, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:
3 (1) Existing federal and state law requires placement of all
4 children in out-of-home or foster care in the least restrictive, most
5 familylike setting possible. California's Outcome and
6 Accountability System also requires reduced placement of children
7 in group homes, as well as improved permanency and
8 connectedness outcomes for children in foster care.
9 (2) Existing state law also recognizes the special developmental
10 needs of very young children, under six years of age, in foster care,
11 and provides that they may not be placed in group homes except
12 under very limited and specific circumstances. The Legislature
13 recognizes that children between 6 and 12 years of age, inclusive,
14 who have suffered the trauma of abuse or neglect, and the trauma
15 of removal from their families, have many of the same
16 developmental needs as even younger children. In order to meet
17 their physical, emotional, and psychological needs, these young
18 children require nurturing family environments where they have
19 a stable, secure relationship with consistent caregivers. They also
20 need continuity, consistency, and predictability for the sake of
21 their health and their early success in school. Before 12 years of
22 age, these children have better opportunities to establish lasting
23 relationships that lead to permanency when they live in
24 family-based settings. The placement of these young children in
25 congregate care settings or institutions is therefore especially

1 damaging, and can have lifelong repercussions. Recognizing this
2 danger, some California counties have successfully worked to
3 reduce the population of children in group care and to support their
4 placement instead in family-based settings.

5 (3) The Legislature recognizes that, despite existing law and
6 isolated areas of best practice, children as young as six years of
7 age continue to be placed in congregate care facilities with children
8 as old as 17 or 18 years of age, a mixture of dependent and
9 delinquent children, and little one-on-one support, sometimes for
10 years on end. This practice is not only damaging to young children,
11 but also is an inefficient use of state resources. The cost of group
12 care is many times that of community-based services or family
13 foster care. In fact, 40 percent of California's current expenditures
14 on foster care placements are paid to group homes, although only
15 11 percent of children are placed in group homes. Still, research
16 documents worse outcomes for children who live in group care.

17 (b) (1) It is therefore the intent of the Legislature in enacting
18 this act to extend protections, like those that are available in other
19 states, against unnecessary placement of children 12 years of age
20 and younger in congregate care. It is the intent of the Legislature,
21 if a young child's placement in a group home setting cannot be
22 avoided, that the facility shall meet specific criteria, including
23 enhanced staffing ratios, a houseparent, and family grouping, which
24 are currently required for housing foster youth under six years of
25 age.

26 (2) It is the further intent of the Legislature that the state,
27 counties, and foster care providers shall work together to identify
28 any existing barriers to placing children 12 years of age and
29 younger in family homes, and to identify the resources, practices,
30 and existing funding streams that will ensure utilization of
31 family-based placements for very young children.

32 SEC. 2. Section 1530.8 of the Health and Safety Code is
33 amended to read:

34 1530.8. (a) (1) The department shall adopt regulations for
35 community care facilities licensed as group homes, and for
36 temporary shelter care facilities as defined in subdivision (c), that
37 care for dependent children, children placed by a regional center,
38 or voluntary placements, who are younger than six years of age.
39 The department shall adopt these regulations after assessing the

1 needs of this population and developing standards pursuant to
2 Section 11467.1 of the Welfare and Institutions Code.

3 (2) The department shall adopt regulations under this section
4 that apply to mother and infant programs serving children younger
5 than six years of age who reside in a group home with a minor
6 parent who is the primary caregiver of the child that shall be subject
7 to the requirements of subdivision (d).

8 (3) Effective January 1, 2009, the regulations adopted by the
9 department pursuant to paragraph (1) shall also apply to a
10 community care facility licensed as a group home, or a temporary
11 shelter facility as defined in subdivision (c), that provides care for
12 a dependent child, a child placed by a regional center, or a child
13 in voluntary placement, who is between 6 and 12 years of age,
14 inclusive.

15 (b) The regulations shall include physical environment standards,
16 including staffing and health and safety requirements, that meet
17 or exceed state child care standards under Title 5 and Title 22 of
18 the California Code of Regulations.

19 (c) For purposes of this section, a “temporary shelter care
20 facility” means any residential facility that meets all of the
21 following requirements:

22 (1) It is owned and operated by the county.

23 (2) It is a 24-hour facility that provides short-term residential
24 care and supervision for dependent children under 18 years of age
25 who have been removed from their homes as a result of abuse or
26 neglect, as defined in Section 300 of the Welfare and Institutions
27 Code, or both.

28 (d) (1) By September 1, 1999, the department shall submit for
29 public comment regulations specific to mother and infant programs
30 serving children younger than six years of age who are dependents
31 of the court and reside in a group home with a minor child who is
32 the primary caregiver of the child.

33 (2) The regulations shall include provisions that when the minor
34 parent is absent and the facility is providing direct care to children
35 younger than six years of age who are dependents of the court,
36 there shall be one child care staff person for every four children
37 of minor parents.

38 (3) In developing these proposed regulations, the department
39 shall issue the proposed regulations for public comment, and shall

1 refer to existing national standards for mother and infant programs
2 as a guideline, where applicable.

3 (4) Prior to preparing the proposed regulations, the department
4 shall consult with interested parties by convening a meeting by
5 February 28, 1999, that shall include, but not be limited to,
6 representatives from a public interest law firm specializing in
7 children's issues and provider organizations.

8 SEC. 3. Section 319.2 of the Welfare and Institutions Code is
9 amended to read:

10 319.2. Notwithstanding Section 319, when a child 12 years of
11 age or younger is not released from the custody of the court, the
12 child may be placed in a community care facility licensed as a
13 group home for children or in a temporary shelter care facility, as
14 defined in Section 1530.8 of the Health and Safety Code, only
15 when the court finds that placement is necessary to secure a
16 complete and adequate evaluation, including placement planning
17 and transition time. The placement period shall not exceed 60 days
18 unless a case plan has been developed and the need for additional
19 time is documented in the case plan and has been approved by the
20 supervisor of the caseworker's supervisor.

21 SEC. 4. Section 361.2 of the Welfare and Institutions Code is
22 amended to read:

23 361.2. (a) When a court orders removal of a child pursuant to
24 Section 361, the court shall first determine whether there is a parent
25 of the child, with whom the child was not residing at the time that
26 the events or conditions arose that brought the child within the
27 provisions of Section 300, who desires to assume custody of the
28 child. If that parent requests custody, the court shall place the child
29 with the parent unless it finds that placement with that parent would
30 be detrimental to the safety, protection, or physical or emotional
31 well-being of the child.

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

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

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

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

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

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

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

33 (1) The home of a noncustodial parent as described in
34 subdivision (a).

35 (2) The approved home of a relative.

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

38 (4) A foster home in which the child has been placed before an
39 interruption in foster care, if that placement is in the best interest
40 of the child and space is available.

1 (5) A suitable licensed community care facility.

2 (6) With a foster family agency to be placed in a suitable
3 licensed foster family home or certified family home which has
4 been certified by the agency as meeting licensing standards.

5 (7) A home or facility in accordance with the federal Indian
6 Child Welfare Act.

7 (8) A child under the age of 12 years may be placed in a
8 community care facility licensed as a group home for children, or
9 a temporary shelter care facility as defined in Section 1530.8 of
10 the Health and Safety Code, only under any of the following
11 circumstances:

12 (A) When a case plan indicates that placement is for purposes
13 of providing specialized treatment to the child, the case plan
14 specifies the need for, nature of, and anticipated duration of this
15 treatment, and the facility meets the applicable regulations adopted
16 under Section 1530.8 of the Health and Safety Code and standards
17 developed pursuant to Section 11467.1. The specialized treatment
18 period shall not exceed 120 days, unless additional time is needed
19 pursuant to the case plan as documented by the caseworker and
20 approved by the caseworker's supervisor.

21 (B) When a case plan indicates that placement is for purposes
22 of providing family reunification services. In addition, the facility
23 offers family reunification services that meet the needs of the
24 individual child and his or her family, permits parents to have
25 reasonable access to their children 24 hours a day, encourages
26 extensive parental involvement in meeting the daily needs of their
27 children, and employs staff trained to provide family reunification
28 services. In addition, one of the following conditions exists:

29 (i) The child's parent is also a ward of the court and resides in
30 the facility.

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

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

39 (f) (1) If the child is taken from the physical custody of the
40 child's parent or guardian and unless the child is placed with

1 relatives, the child shall be placed in foster care in the county of
2 residence of the child's parent or guardian in order to facilitate
3 reunification of the family.

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

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

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

24 (5) When it has been determined that a child is to be placed
25 out-of-county either in a group home or with a foster family agency
26 for subsequent placement in a certified foster family home, and
27 the sending county is to maintain responsibility for supervision
28 and visitation of the child, the sending county shall develop a plan
29 of supervision and visitation that specifies the supervision and
30 visitation activities to be performed and specifies that the sending
31 county is responsible for performing those activities. In addition
32 to the plan of supervision and visitation, the sending county shall
33 document information regarding any known or suspected dangerous
34 behavior of the child that indicates the child may pose a safety
35 concern in the receiving county. Upon implementation of the Child
36 Welfare Services Case Management System, the plan of
37 supervision and visitation, as well as information regarding any
38 known or suspected dangerous behavior of the child, shall be made
39 available to the receiving county upon placement of the child in
40 the receiving county. If placement occurs on a weekend or holiday,

1 the information shall be made available to the receiving county on
2 or before the end of the next business day.

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

18 ~~(7) If the case plan goals for a child 12 years of age or younger
19 include reunification, the child shall not be placed in a residential
20 facility or group home located more than 30 miles from the
21 residence of the child's parent or guardian.~~

22 ~~(8) If the case plan goals for a child 12 years of age or younger
23 do not include reunification, and do include permanent placement
24 with an individual caregiver, the child shall not be placed in a
25 residential facility or group home located more than 30 miles from
26 the residence of the individual caregiver.~~

27 ~~(9) If the case plan goals for a child 12 years of age or younger
28 do not include reunification or permanent placement with an
29 individual caregiver, the child shall not be placed in a residential
30 facility or group home located more than 30 miles from the
31 residence of the child's current or former parent or guardian who
32 either retains parental rights or whose parental rights were
33 terminated.~~

34 (g) Whenever the social worker must change the placement of
35 the child and is unable to find a suitable placement within the
36 county and must place the child outside the county, the placement
37 shall not be made until he or she has served written notice on the
38 parent or guardian at least 14 days prior to the placement, unless
39 the child's health or well-being is endangered by delaying the
40 action or would be endangered if prior notice were given. The

1 notice shall state the reasons which require placement outside the
2 county. The parent or guardian may object to the placement not
3 later than seven days after receipt of the notice and, upon objection,
4 the court shall hold a hearing not later than five days after the
5 objection and prior to the placement. The court shall order
6 out-of-county placement if it finds that the child's particular needs
7 require placement outside the county.

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

14 (i) Where the court has ordered removal of the child from the
15 physical custody of his or her parents pursuant to Section 361, the
16 court shall consider whether there are any siblings under the court's
17 jurisdiction, the nature of the relationship between the child and
18 his or her siblings, the appropriateness of developing or maintaining
19 the sibling relationships pursuant to Section 16002, and the impact
20 of the sibling relationships on the child's placement and planning
21 for legal permanence.

22 (j) (1) When an agency has placed a child with a relative
23 caregiver, a nonrelative extended family member, a licensed foster
24 family home, or a group home, the agency shall ensure placement
25 of the child in a home that, to the fullest extent possible, best meets
26 the day-to-day needs of the child. A home that best meets the
27 day-to-day needs of the child shall satisfy all of the following
28 criteria:

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

31 (B) The child's caregiver is permitted to maintain the least
32 restrictive and most familylike environment that serves the
33 day-to-day needs of the child.

34 (C) The child is permitted to engage in reasonable,
35 age-appropriate day-to-day activities that promote the most
36 familylike environment for the foster child.

37 (2) The foster child's caregiver shall use a reasonable and
38 prudent parent standard, as defined in paragraph (2) of subdivision
39 (a) of Section 362.04, to determine day-to-day activities that are
40 age-appropriate to meet the needs of the child. Nothing in this

1 section shall be construed to permit a child’s caregiver to permit
2 the child to engage in day-to-day activities that carry an
3 unreasonable risk of harm, or subject the child to abuse or neglect.

4 SEC. 5. If the Commission on State Mandates determines that
5 this act contains costs mandated by the state, reimbursement to
6 local agencies and school districts for those costs shall be made
7 pursuant to Part 7 (commencing with Section 17500) of Division
8 4 of Title 2 of the Government Code.

O