

AMENDED IN ASSEMBLY JUNE 21, 2011

AMENDED IN SENATE APRIL 14, 2011

**SENATE BILL**

**No. 926**

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**Introduced by Senator Runner**

February 18, 2011

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An act to amend Section ~~361.3~~ 317 of the Welfare and Institutions Code, relating to dependent children.

LEGISLATIVE COUNSEL'S DIGEST

SB 926, as amended, Runner. Dependent children: relative placements: disclosure.

Existing law *requires a court to appoint counsel for a child who is not represented by counsel in dependency proceedings, except as specified. Counsel for the child is required to investigate the interests of the child beyond the scope of the juvenile proceeding, and report to the court other interests of the child that may need to be protected in other administrative or judicial proceedings. Existing law* requires that in any case in which a child is removed from the physical custody of his or her parents due to abuse or neglect, preferential consideration be given to a request by a relative of the child for placement of the child with the relative. ~~Existing law requires the court to authorize the county social worker, in assessing a relative for the possibility of placement, to disclose to the relative, as appropriate, the fact that the child is in custody, the alleged reasons for the custody, and the projected likely date for the child's return home or placement for adoption or legal guardianship.~~

~~This bill would expand those provisions to additionally require the court to authorize an attorney for the child, or the attorney's agent, to~~

~~make those disclosures to the relative who is being assessed for the possibility of placement.~~

*This bill would authorize counsel for the child or counsel's agent to disclose to a relative who is being assessed for the possibility of placement of the child the fact that the child is in custody and other related information, as specified.*

*The bill would state that the changes made by this measure are declaratory of existing law, and would also make technical, nonsubstantive changes to those provisions.*

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

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

1     *SECTION 1. Section 317 of the Welfare and Institutions Code*  
2     *is amended to read:*

3     317. (a) (1) When it appears to the court that a parent or  
4     guardian of the child desires counsel but is presently financially  
5     unable to afford and cannot for that reason employ counsel, the  
6     court may appoint counsel as provided in this section.

7     (2) When it appears to the court that a parent or Indian custodian  
8     in an Indian child custody proceeding desires counsel but is  
9     presently unable to afford and cannot for that reason employ  
10    counsel, the provisions of subsection (b) of Section 1912 of the  
11    *federal* Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.)  
12    and Section 23.13 of Title 25 of the Code of Federal Regulations  
13    are applicable.

14    (b) When it appears to the court that a parent or guardian of the  
15    child is presently financially unable to afford and cannot for that  
16    reason employ counsel, and the child has been placed in  
17    out-of-home care, or the petitioning agency is recommending that  
18    the child be placed in out-of-home care, the court shall appoint  
19    counsel for the parent or guardian, unless the court finds that the  
20    parent or guardian has made a knowing and intelligent waiver of  
21    counsel as provided in this section.

22    (c) If a child is not represented by counsel, the court shall  
23    appoint counsel for the child, unless the court finds that the child  
24    would not benefit from the appointment of counsel. The court shall  
25    state on the record its reasons for that finding. A primary  
26    responsibility of ~~any~~ counsel appointed to represent a child

1 pursuant to this section shall be to advocate for the protection,  
2 safety, and physical and emotional well-being of the child. Counsel  
3 ~~for the child~~ may be a district attorney, public defender, or other  
4 member of the bar, provided that ~~the counsel~~ *he or she* does not  
5 represent another party or county agency whose interests conflict  
6 with the child's interests. The fact that the district attorney  
7 represents the child in a proceeding pursuant to Section 300 as  
8 well as conducts a criminal investigation or files a criminal  
9 complaint or information arising from the same or reasonably  
10 related set of facts as the proceeding pursuant to Section 300 is  
11 not in and of itself a conflict of interest. The court may fix the  
12 compensation for the services of appointed counsel. The appointed  
13 counsel shall have a caseload and training that ensures adequate  
14 representation of the child. The Judicial Council shall promulgate  
15 rules of court that establish caseload standards, training  
16 requirements, and guidelines for appointed counsel for children  
17 and shall adopt rules as required by Section 326.5 no later than  
18 July 1, 2001.

19 (d) ~~The counsel appointed by the court~~ *Counsel* shall represent  
20 the parent, guardian, or child at the detention hearing and at all  
21 subsequent proceedings before the juvenile court. Counsel shall  
22 continue to represent the parent, guardian, or child unless relieved  
23 by the court upon the substitution of other counsel or for cause.  
24 The representation shall include representing the parent, guardian,  
25 or the child in termination proceedings and in those proceedings  
26 relating to the institution or setting aside of a legal guardianship.  
27 On and after January 1, 2012, in the case of a nonminor dependent,  
28 as described in subdivision (v) of Section 11400, no representation  
29 by counsel shall be provided for a parent.

30 (e) ~~The counsel for the child~~ (1) *Counsel* shall be charged in  
31 general with the representation of the child's interests. To that end,  
32 ~~the~~ counsel shall make or cause to have made any further  
33 investigations that he or she deems in good faith to be reasonably  
34 necessary to ascertain the facts, including the interviewing of  
35 witnesses, and ~~he or she~~ shall examine and cross-examine witnesses  
36 in both the adjudicatory and dispositional hearings. ~~He or she~~  
37 *Counsel* may also introduce and examine his or her own witnesses,  
38 make recommendations to the court concerning the child's welfare,  
39 and participate further in the proceedings to the degree necessary  
40 to adequately represent the child. ~~In any case in which~~

1 (2) *If* the child is four years of age or older, counsel shall  
2 interview the child to determine the child's wishes and ~~to~~ assess  
3 the child's well-being, and shall advise the court of the child's  
4 wishes. Counsel ~~for the child~~ shall not advocate for the return of  
5 the child if, to the best of his or her knowledge, ~~that return of the~~  
6 *child* conflicts with the protection and safety of the child. ~~In~~

7 ~~addition~~ counsel

8 (3) *Counsel* shall investigate the interests of the child beyond  
9 the scope of the juvenile proceeding, and report to the court other  
10 interests of the child that may need to be protected by the institution  
11 of other administrative or judicial proceedings. ~~The attorney~~  
12 *Counsel* representing a child in a dependency proceeding is not  
13 required to assume the responsibilities of a social worker, and is  
14 not expected to provide nonlegal services to the child. ~~The~~

15 (4) *Counsel for the child and counsel's agent may, but are not*  
16 *required to, disclose to an individual who is being assessed for*  
17 *the possibility of placement pursuant to Section 361.3 the fact that*  
18 *the child is in custody, the alleged reasons that the child is in*  
19 *custody, and the projected likely date for the child's return home,*  
20 *placement for adoption, or legal guardianship. Nothing in this*  
21 *paragraph shall be construed to prohibit counsel from making*  
22 *other disclosures pursuant to this subdivision, as appropriate.*

23 (5) *Nothing in this subdivision shall be construed to permit*  
24 *counsel to violate a child's attorney-client privilege.*

25 (6) *The changes made to this subdivision during the 2011–12*  
26 *Regular Session of the Legislature by the act adding paragraphs*  
27 *(4) and (5) are declaratory of existing law.*

28 (7) *The court shall take whatever appropriate action is necessary*  
29 *to fully protect the interests of the child.*

30 (f) Either the child or ~~the~~ counsel for the child, with the informed  
31 consent of the child if the child is found by the court to be of  
32 sufficient age and maturity to ~~so~~ consent, which shall be presumed,  
33 subject to rebuttal by clear and convincing evidence, if the child  
34 is over 12 years of age, may invoke the psychotherapist-client  
35 privilege, physician-patient privilege, and clergyman-penitent  
36 privilege; ~~and if.~~ *If* the child invokes the privilege, counsel may  
37 not waive it, but if counsel invokes the privilege, the child may  
38 waive it. Counsel shall be *the* holder of these privileges if the child  
39 is found by the court not to be of sufficient age and maturity to ~~so~~  
40 consent. For the sole purpose of fulfilling his or her obligation to

1 provide legal representation of the child, counsel ~~for a child~~ shall  
2 have access to all records with regard to the child maintained by  
3 a health care facility, as defined in Section 1545 of the Penal Code,  
4 health care providers, as defined in Section 6146 of the Business  
5 and Professions Code, a physician and surgeon or other health  
6 practitioner, as defined in former Section 11165.8 of the Penal  
7 Code, as that section read on January 1, 2000, or a child care  
8 custodian, as defined in former Section 11165.7 of the Penal Code,  
9 as that section read on January 1, 2000. Notwithstanding any other  
10 law, counsel shall be given access to all records relevant to the  
11 case ~~which~~ *that* are maintained by state or local public agencies.  
12 All information requested from a child protective agency regarding  
13 a child who is in protective custody, or from a child's guardian ad  
14 litem, shall be provided to the child's counsel within 30 days of  
15 the request.

16 (g) In a county of the third class, if counsel is to be provided to  
17 a child at ~~county~~ *the county's* expense other than by counsel for  
18 the agency, the court shall first utilize the services of the public  
19 defender prior to appointing private counsel, ~~to provide legal~~  
20 ~~counsel~~. Nothing in this subdivision shall be construed to require  
21 the appointment of the public defender in any case in which the  
22 public defender has a conflict of interest. In the interest of justice,  
23 a court may depart from that portion of the procedure requiring  
24 appointment of the public defender after making a finding of good  
25 cause and stating the reasons therefor on the record.

26 (h) In a county of the third class, if counsel is to be appointed  
27 *to provide legal counsel* for a parent or guardian at ~~county~~ *the*  
28 *county's* expense, the court shall first utilize the services of the  
29 alternate public defender, prior to appointing private counsel, ~~to~~  
30 ~~provide legal counsel~~. Nothing in this subdivision shall be  
31 construed to require the appointment of the alternate public  
32 defender in any case in which the public defender has a conflict  
33 of interest. In the interest of justice, a court may depart from that  
34 portion of the procedure requiring appointment of the alternate  
35 public defender after making a finding of good cause and stating  
36 the reasons therefor on the record.

37 ~~SECTION 1. Section 361.3 of the Welfare and Institutions~~  
38 ~~Code is amended to read:~~

39 ~~361.3. (a) In any case in which a child is removed from the~~  
40 ~~physical custody of his or her parents pursuant to Section 361,~~

1 preferential consideration shall be given to a request by a relative  
2 of the child for placement of the child with the relative. In  
3 determining whether placement with a relative is appropriate, the  
4 county social worker and court shall consider, but shall not be  
5 limited to, consideration of all the following factors:

6 (1) ~~The best interest of the child, including special physical,~~  
7 ~~psychological, educational, medical, or emotional needs.~~

8 (2) ~~The wishes of the parent, the relative, and child, if~~  
9 ~~appropriate.~~

10 (3) ~~The provisions of Part 6 (commencing with Section 7950)~~  
11 ~~of Division 12 of the Family Code regarding relative placement.~~

12 (4) ~~Placement of siblings and half siblings in the same home,~~  
13 ~~if that placement is found to be in the best interest of each of the~~  
14 ~~children as provided in Section 16002.~~

15 (5) ~~The good moral character of the relative and any other adult~~  
16 ~~living in the home, including whether any individual residing in~~  
17 ~~the home has a prior history of violent criminal acts or has been~~  
18 ~~responsible for acts of child abuse or neglect.~~

19 (6) ~~The nature and duration of the relationship between the child~~  
20 ~~and the relative, and the relative's desire to care for, and to provide~~  
21 ~~legal permanency for, the child if reunification is unsuccessful.~~

22 (7) ~~The ability of the relative to do the following:~~

23 (A) ~~Provide a safe, secure, and stable environment for the child.~~

24 (B) ~~Exercise proper and effective care and control of the child.~~

25 (C) ~~Provide a home and the necessities of life for the child.~~

26 (D) ~~Protect the child from his or her parents.~~

27 (E) ~~Facilitate court-ordered reunification efforts with the parents.~~

28 (F) ~~Facilitate visitation with the child's other relatives.~~

29 (G) ~~Facilitate implementation of all elements of the case plan.~~

30 (H) ~~Provide legal permanency for the child if reunification fails.~~

31 However, any finding made with respect to the factor considered  
32 pursuant to this subparagraph and pursuant to subparagraph (G)  
33 shall not be the sole basis for precluding preferential placement  
34 with a relative.

35 (I) ~~Arrange for appropriate and safe child care, as necessary.~~

36 (8) ~~The safety of the relative's home. For a relative to be~~  
37 ~~considered appropriate to receive placement of a child under this~~  
38 ~~section, the relative's home shall first be approved pursuant to the~~  
39 ~~process and standards described in subdivision (d) of Section 309.~~

1 In this regard, the Legislature declares that a physical disability,  
2 such as blindness or deafness, is no bar to the raising of children,  
3 and a county social worker's determination as to the ability of a  
4 disabled relative to exercise care and control should center upon  
5 whether the relative's disability prevents him or her from exercising  
6 care and control. The court shall order the parent to disclose to the  
7 county social worker the names, residences, and any other known  
8 identifying information of any maternal or paternal relatives of  
9 the child. This inquiry shall not be construed, however, to guarantee  
10 that the child will be placed with any person so identified. The  
11 county social worker shall initially contact the relatives given  
12 preferential consideration for placement to determine if they desire  
13 the child to be placed with them. Those desiring placement shall  
14 be assessed according to the factors enumerated in this subdivision.  
15 The county social worker shall document these efforts in the social  
16 study prepared pursuant to Section 358.1. The court shall authorize  
17 the county social worker, while assessing these relatives for the  
18 possibility of placement, to disclose to the relative, as appropriate,  
19 the fact that the child is in custody, the alleged reasons for the  
20 custody, and the projected likely date for the child's return home  
21 or placement for adoption or legal guardianship. However, this  
22 investigation shall not be construed as good cause for continuance  
23 of the dispositional hearing conducted pursuant to Section 358.  
24 The court shall also authorize the attorney for the child appointed  
25 pursuant to subdivision (c) of Section 317, and the attorney's agent,  
26 to disclose information to the relative who is being assessed for  
27 the possibility of placement, as appropriate, the fact that the child  
28 is in custody, the alleged reasons for the custody, and the projected  
29 likely date for the child's return home or placement for adoption  
30 or legal guardianship.

31 (b) In any case in which more than one appropriate relative  
32 requests preferential consideration pursuant to this section, each  
33 relative shall be considered under the factors enumerated in  
34 subdivision (a).

35 (c) For purposes of this section:

36 (1) "Preferential consideration" means that the relative seeking  
37 placement shall be the first placement to be considered and  
38 investigated.

39 (2) "Relative" means an adult who is related to the child by  
40 blood, adoption, or affinity within the fifth degree of kinship;

1 including stepparents, stepsiblings, and all relatives whose status  
2 is preceded by the words “great,” “great-great” or “grand” or the  
3 spouse of any of these persons even if the marriage was terminated  
4 by death or dissolution. However, only the following relatives  
5 shall be given preferential consideration for the placement of the  
6 child: an adult who is a grandparent, aunt, uncle, or sibling.

7 (d) Subsequent to the hearing conducted pursuant to Section  
8 358, whenever a new placement of the child must be made,  
9 consideration for placement shall again be given as described in  
10 this section to relatives who have not been found to be unsuitable  
11 and who will fulfill the child’s reunification or permanent plan  
12 requirements. In addition to the factors described in subdivision  
13 (a), the county social worker shall consider whether the relative  
14 has established and maintained a relationship with the child.

15 (e) If the court does not place the child with a relative who has  
16 been considered for placement pursuant to this section, the court  
17 shall state for the record the reasons placement with that relative  
18 was denied.

19 (f) (1) With respect to a child who satisfies the criteria set forth  
20 in paragraph (2), the department and any licensed adoption agency  
21 may search for a relative and furnish identifying information  
22 relating to the child to that relative if it is believed the child’s  
23 welfare will be promoted thereby.

24 (2) Paragraph (1) shall apply if both of the following conditions  
25 are satisfied:

26 (A) The child was previously a dependent of the court.

27 (B) The child was previously adopted and the adoption has been  
28 disrupted, set aside pursuant to Section 9100 or 9102 of the Family  
29 Code, or the child has been released into the custody of the  
30 department or a licensed adoption agency by the adoptive parent  
31 or parents.

32 (3) As used in this subdivision, “relative” includes a member  
33 of the child’s birth family and nonrelated extended family  
34 members, regardless of whether the parental rights were terminated,  
35 provided that both of the following are true:

36 (A) No appropriate potential caretaker is known to exist from  
37 the child’s adoptive family, including nonrelated extended family  
38 members of the adoptive family.

1     ~~(B) The child was not the subject of a voluntary relinquishment~~  
2     ~~by the birth parents pursuant to Section 8700 of the Family Code~~  
3     ~~or Section 1255.7 of the Health and Safety Code.~~

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