

AMENDED IN SENATE JUNE 6, 2016

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2872

Introduced by Assembly Member Patterson

February 19, 2016

An act to amend Section 9001 of the Family Code, and to amend Sections 305.6 and 827 of the Welfare and Institutions Code, relating to children.

LEGISLATIVE COUNSEL'S DIGEST

AB 2872, as amended, Patterson. Children.

(1) Existing law prohibits a peace officer from taking into temporary custody, without a warrant, a minor who is in a hospital if specified conditions exist, including that the minor is a newborn who tested positive for illegal drugs or whose birth mother tested positive for illegal drugs or the minor is the subject of a proposed adoption and a Health Facility Minor Release Report has been completed by the hospital, as specified.

This bill would require the appropriate hospital personnel to complete a Health Facility Minor Release Report and provide copies to specified parties upon request by a parent.

(2) Existing law authorizes specified persons to inspect a juvenile case file, including a court-appointed investigator who is actively participating in a guardianship case involving a minor, as specified, and acting within the scope of his or her duties in that case.

This bill would additionally permit a statutorily authorized or court-appointed investigator who is conducting specified investigations

relating to children, including stepparent adoptions, to inspect a juvenile case file.

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. Section 9001 of the Family Code is amended to
2 read:

3 9001. (a) Except as provided in Section 9000.5, before granting
4 or denying a stepparent adoption request, the court shall review
5 and consider a written investigative report. The report in a
6 stepparent adoption case shall not require a home study unless so
7 ordered by the court upon request of an investigator or interested
8 person, or on the court’s own motion. “Home study” as used in
9 this section means a physical investigation of the premises where
10 the child is residing.

11 (b) At the time of filing the adoption request, the petitioner shall
12 inform the court in writing if the petitioner is electing to have the
13 investigation and written report completed by a licensed clinical
14 social worker, a licensed marriage and family therapist, or a private
15 licensed adoption agency, in which cases the petitioner shall not
16 be required to pay any investigation fee pursuant to Section 9002
17 at the time of filing, but shall pay these fees directly to the
18 investigator. Absent that notification, the court may, at the time
19 of filing, collect an investigation fee pursuant to Section 9002, and
20 may assign one of the following to complete the investigation: a
21 probation officer, a qualified court investigator, or the county
22 welfare department, if so authorized by the board of supervisors
23 of the county where the action is pending.

24 (c) If a private licensed adoption agency conducts the
25 investigation, it shall assign the investigation to a licensed clinical
26 social worker or licensed marriage and family therapist associated
27 with the agency. Any grievance regarding the investigation shall
28 be directed to the licensing authority of the clinical social worker
29 or marriage and family therapist, as applicable.

30 (d) Nothing in this section shall be construed to require the State
31 Department of Social Services to issue regulations for stepparent
32 adoptions.

1 SEC. 2. Section 305.6 of the Welfare and Institutions Code is
2 amended to read:

3 305.6. (a) Any peace officer may, without a warrant, take into
4 temporary custody a minor who is in a hospital if the release of
5 the minor to a prospective adoptive parent or a representative of
6 a licensed adoption agency poses an immediate danger to the
7 minor's health or safety.

8 (b) Notwithstanding subdivision (a) and Section 305, a peace
9 officer shall not, without a warrant, take into temporary custody
10 a minor who is in a hospital if all of the following conditions exist:

11 (1) The minor is a newborn who tested positive for illegal drugs
12 or whose birth mother tested positive for illegal drugs.

13 (2) ~~(A)~~The minor is the subject of a proposed adoption and a
14 Health Facility Minor Release Report, developed by the
15 department, has been completed by the hospital, including the
16 marking of the boxes applicable to an independent adoption or
17 agency adoption planning, and signed by the placing birth parent
18 or birth parents, as well as either the prospective adoptive parent
19 or parents or an authorized representative of a licensed adoption
20 agency, prior to the discharge of the birth parent or the minor from
21 the hospital. ~~Prior to signing the Health Facility Minor Release~~
22 ~~Report, the birth parent or parents shall be given a *The Health*~~
23 ~~*Facility Minor Release Report shall include a notice written in at*~~
24 ~~least 14-point pica type, containing substantially all of the~~
25 ~~following statements:~~

26 ~~(i)~~

27 (A) That the Health Facility Minor Release Report does not
28 constitute consent to adoption of the minor by the prospective
29 adoptive parent or parents, or any other person.

30 ~~(ii)~~

31 (B) That the Health Facility Minor Release Report does not
32 constitute a relinquishment of parental rights for the purposes of
33 adoption.

34 ~~(iii)~~

35 (C) That the birth parent or parents or any person authorized by
36 the birth parent or parents may reclaim the minor at any time from
37 the prospective adoptive parent or parents or any other person to
38 whom the minor was released by the hospital, as provided in
39 Section 8700, 8814.5, or 8815 of the Family Code.

1 ~~(B) The notice shall be signed by the birth parent or parents and~~
2 ~~attached to the Health Facility Minor Release Report, a copy of~~
3 ~~which shall be provided to the birth parent or parents by hospital~~
4 ~~personnel at the time the form is completed.~~

5 (3) The release of the minor to a prospective adoptive parent or
6 parents or an authorized representative of a licensed adoption
7 agency does not pose an immediate danger to the minor.

8 (4) An attorney or an adoption agency has provided
9 documentation stating that he or she, or the agency, is representing
10 the prospective adoptive parent or parents for purposes of the
11 adoption. In the case of an independent adoption, as defined in
12 Section 8524 of the Family Code, the attorney or adoption agency
13 shall provide documentation stating that the prospective adoptive
14 parent or parents have been informed that the child may be eligible
15 for benefits provided pursuant to the Adoption Assistance Program,
16 as set forth in Chapter 2.1 (commencing with Section 16115) of
17 Part 4 of Division 9, only if, at the time the adoption request is
18 filed, the child has met the requirements to receive federal
19 supplemental security income benefits pursuant to Subchapter XVI
20 (commencing with Section 1381) of Chapter 7 of Title 42 of the
21 United States Code, as determined and documented by the federal
22 Social Security Administration.

23 (5) The prospective adoptive parent or parents or their
24 representative, or an authorized representative of a licensed
25 adoption agency, provides all of the following to the peace-officer
26 ~~who seeks to take the minor into temporary custody:~~ *officer:*

27 (A) A fully executed copy of the Health Facility Minor Release
28 Report.

29 (B) A written form signed by either the prospective adoptive
30 parent or parents or a representative of the licensed adoption
31 agency, which shall include all of the following:

32 (i) A statement that the minor is the subject of a proposed
33 adoption.

34 (ii) A declaration that the signer or signers will immediately
35 notify the county child welfare agency pursuant to Section 11165.9
36 of the Penal Code if the adoption plan is terminated for any reason,
37 and will not release the minor to the birth parent or parents or any
38 designee of the birth parent or parents until the county child welfare
39 agency or local law enforcement agency completes an investigation
40 and determines that release of the minor to the birth parent or

1 parents or a designee of the birth parent or parents will not create
2 an immediate risk to the health or safety of the minor.

3 (iii) An agreement to provide a conformed copy of the adoption
4 request or guardianship petition to the county child welfare agency
5 within five business days after filing.

6 (iv) The names, identifying information, and contact information
7 for the minor, for each prospective adoptive parent, and for each
8 birth parent, to the extent that information is known. In the case
9 of an agency adoption where no prospective adoptive parent or
10 parents are identified at the time of the minor's release from the
11 hospital, the licensed adoption agency may provide the information
12 as it pertains to the licensed or certified foster home into which
13 the agency intends to place the minor.

14 (c) (1) In every independent adoption proceeding under this
15 section, the prospective adoptive parent or parents shall file with
16 the court either an adoption request within 10 working days after
17 execution of an adoption placement agreement, or a guardianship
18 petition within 30 calendar days after the child's discharge from
19 the hospital, whichever is earlier.

20 (2) If the adoption plan for a minor who was released from the
21 hospital pursuant to subdivision (b) is terminated for any reason,
22 the prospective adoptive parent or parents or licensed adoption
23 agency shall immediately notify the county child welfare agency.
24 The prospective adoptive parent or parents or licensed adoption
25 agency may not release the minor into the physical custody of the
26 birth parent or parents, or any designee of the birth parent or
27 parents, until the county child welfare agency or local law
28 enforcement agency completes an investigation and determines
29 that release of the minor to the birth parent or parents or a designee
30 of the birth parent or parents will not create an immediate risk to
31 the health or safety of the minor.

32 (d) Upon request ~~by a parent~~ *by a birth parent or parents* of the
33 minor newborn, the appropriate hospital personnel shall complete
34 a Health Facility Minor Release Report and provide copies of the
35 report to ~~all parties listed in subparagraph (B) of paragraph (1) of~~
36 ~~subdivision (b).~~ *the birth parent or parents, and the person or*
37 *persons who will receive physical custody of the child upon*
38 *discharge.* Hospital personnel shall not refuse to complete a Health
39 Facility Minor Release Report for any reason, even if the minor
40 is ineligible for release at that time. *However, nothing in this*

1 *section shall be construed to require hospital personnel to release*
2 *a minor contrary to the directives of a child welfare agency.*

3 (e) Nothing in this section is intended to create a duty that
4 requires law enforcement to investigate the prospective adoptive
5 parent or parents.

6 SEC. 3. Section 827 of the Welfare and Institutions Code is
7 amended to read:

8 827. (a) (1) Except as provided in Section 828, a case file
9 may be inspected only by the following:

10 (A) Court personnel.

11 (B) The district attorney, a city attorney, or city prosecutor
12 authorized to prosecute criminal or juvenile cases under state law.

13 (C) The minor who is the subject of the proceeding.

14 (D) The minor's parents or guardian.

15 (E) The attorneys for the parties, judges, referees, other hearing
16 officers, probation officers, and law enforcement officers who are
17 actively participating in criminal or juvenile proceedings involving
18 the minor.

19 (F) The county counsel, city attorney, or any other attorney
20 representing the petitioning agency in a dependency action.

21 (G) The superintendent or designee of the school district where
22 the minor is enrolled or attending school.

23 (H) Members of the child protective agencies as defined in
24 Section 11165.9 of the Penal Code.

25 (I) The State Department of Social Services, to carry out its
26 duties pursuant to Division 9 (commencing with Section 10000),
27 and Part 5 (commencing with Section 7900) of Division 12, of the
28 Family Code to oversee and monitor county child welfare agencies,
29 children in foster care or receiving foster care assistance, and
30 out-of-state placements, Section 10850.4, and paragraph (2).

31 (J) Authorized legal staff or special investigators who are peace
32 officers who are employed by, or who are authorized
33 representatives of, the State Department of Social Services, as
34 necessary to the performance of their duties to inspect, license,
35 and investigate community care facilities, and to ensure that the
36 standards of care and services provided in those facilities are
37 adequate and appropriate and to ascertain compliance with the
38 rules and regulations to which the facilities are subject. The
39 confidential information shall remain confidential except for
40 purposes of inspection, licensing, or investigation pursuant to

1 Chapter 3 (commencing with Section 1500) and Chapter 3.4
2 (commencing with Section 1596.70) of Division 2 of the Health
3 and Safety Code, or a criminal, civil, or administrative proceeding
4 in relation thereto. The confidential information may be used by
5 the State Department of Social Services in a criminal, civil, or
6 administrative proceeding. The confidential information shall be
7 available only to the judge or hearing officer and to the parties to
8 the case. Names that are confidential shall be listed in attachments
9 separate to the general pleadings. The confidential information
10 shall be sealed after the conclusion of the criminal, civil, or
11 administrative hearings, and may not subsequently be released
12 except in accordance with this subdivision. If the confidential
13 information does not result in a criminal, civil, or administrative
14 proceeding, it shall be sealed after the State Department of Social
15 Services decides that no further action will be taken in the matter
16 of suspected licensing violations. Except as otherwise provided in
17 this subdivision, confidential information in the possession of the
18 State Department of Social Services may not contain the name of
19 the minor.

20 (K) Members of children’s multidisciplinary teams, persons, or
21 agencies providing treatment or supervision of the minor.

22 (L) A judge, commissioner, or other hearing officer assigned
23 to a family law case with issues concerning custody or visitation,
24 or both, involving the minor, and the following persons, if actively
25 participating in the family law case: a family court mediator
26 assigned to a case involving the minor pursuant to Article 1
27 (commencing with Section 3160) of Chapter 11 of Part 2 of
28 Division 8 of the Family Code, a court-appointed evaluator or a
29 person conducting a court-connected child custody evaluation,
30 investigation, or assessment pursuant to Section 3111 or 3118 of
31 the Family Code, and counsel appointed for the minor in the family
32 law case pursuant to Section 3150 of the Family Code. Prior to
33 allowing counsel appointed for the minor in the family law case
34 to inspect the file, the court clerk may require counsel to provide
35 a certified copy of the court order appointing him or her as the
36 minor’s counsel.

37 (M) When acting within the scope of investigative duties of an
38 active case, a statutorily authorized or court-appointed investigator
39 who is conducting an investigation pursuant to Section 7663, 7851,
40 or 9001 of the Family Code, or who is actively participating in a

1 guardianship case involving a minor pursuant to Part 2
2 (commencing with Section 1500) of Division 4 of the Probate
3 Code and acting within the scope of his or her duties in that case.

4 (N) A local child support agency for the purpose of establishing
5 paternity and establishing and enforcing child support orders.

6 (O) Juvenile justice commissions as established under Section
7 225. The confidentiality provisions of Section 10850 shall apply
8 to a juvenile justice commission and its members.

9 (P) Any other person who may be designated by court order of
10 the judge of the juvenile court upon filing a petition.

11 (2) (A) Notwithstanding any other law and subject to
12 subparagraph (A) of paragraph (3), juvenile case files, except those
13 relating to matters within the jurisdiction of the court pursuant to
14 Section 601 or 602, that pertain to a deceased child who was within
15 the jurisdiction of the juvenile court pursuant to Section 300, shall
16 be released to the public pursuant to an order by the juvenile court
17 after a petition has been filed and interested parties have been
18 afforded an opportunity to file an objection. Any information
19 relating to another child or which could identify another child,
20 except for information about the deceased, shall be redacted from
21 the juvenile case file prior to release, unless a specific order is
22 made by the juvenile court to the contrary. Except as provided in
23 this paragraph, the presiding judge of the juvenile court may issue
24 an order prohibiting or limiting access to the juvenile case file, or
25 any portion thereof, of a deceased child only upon a showing by
26 a preponderance of evidence that release of the juvenile case file
27 or any portion thereof is detrimental to the safety, protection, or
28 physical or emotional well-being of another child who is directly
29 or indirectly connected to the juvenile case that is the subject of
30 the petition.

31 (B) This paragraph represents a presumption in favor of the
32 release of documents when a child is deceased unless the statutory
33 reasons for confidentiality are shown to exist.

34 (C) If a child whose records are sought has died, and documents
35 are sought pursuant to this paragraph, no weighing or balancing
36 of the interests of those other than a child is permitted.

37 (D) A petition filed under this paragraph shall be served on
38 interested parties by the petitioner, if the petitioner is in possession
39 of their identity and address, and on the custodian of records. Upon
40 receiving a petition, the custodian of records shall serve a copy of

1 the request upon all interested parties that have not been served
2 by the petitioner or on the interested parties served by the petitioner
3 if the custodian of records possesses information, such as a more
4 recent address, indicating that the service by the petitioner may
5 have been ineffective.

6 (E) The custodian of records shall serve the petition within 10
7 calendar days of receipt. If any interested party, including the
8 custodian of records, objects to the petition, the party shall file and
9 serve the objection on the petitioning party no later than 15
10 calendar days of service of the petition.

11 (F) The petitioning party shall have 10 calendar days to file any
12 reply. The juvenile court shall set the matter for hearing no more
13 than 60 calendar days from the date the petition is served on the
14 custodian of records. The court shall render its decision within 30
15 days of the hearing. The matter shall be decided solely upon the
16 basis of the petition and supporting exhibits and declarations, if
17 any, the objection and any supporting exhibits or declarations, if
18 any, and the reply and any supporting declarations or exhibits
19 thereto, and argument at hearing. The court may solely upon its
20 own motion order the appearance of witnesses. If no objection is
21 filed to the petition, the court shall review the petition and issue
22 its decision within 10 calendar days of the final day for filing the
23 objection. Any order of the court shall be immediately reviewable
24 by petition to the appellate court for the issuance of an
25 extraordinary writ.

26 (3) Access to juvenile case files pertaining to matters within the
27 jurisdiction of the juvenile court pursuant to Section 300 shall be
28 limited as follows:

29 (A) If a juvenile case file, or any portion thereof, is privileged
30 or confidential pursuant to any other state law or federal law or
31 regulation, the requirements of that state law or federal law or
32 regulation prohibiting or limiting release of the juvenile case file
33 or any portions thereof shall prevail. Unless a person is listed in
34 subparagraphs (A) to (O), inclusive, of paragraph (1) and is entitled
35 to access under the other state law or federal law or regulation
36 without a court order, all those seeking access, pursuant to other
37 authorization, to portions of, or information relating to the contents
38 of, juvenile case files protected under another state law or federal
39 law or regulation, shall petition the juvenile court. The juvenile
40 court may only release the portion of, or information relating to

1 the contents of, juvenile case files protected by another state law
2 or federal law or regulation if disclosure is not detrimental to the
3 safety, protection, or physical or emotional well-being of a child
4 who is directly or indirectly connected to the juvenile case that is
5 the subject of the petition. This paragraph shall not be construed
6 to limit the ability of the juvenile court to carry out its duties in
7 conducting juvenile court proceedings.

8 (B) Prior to the release of the juvenile case file or any portion
9 thereof, the court shall afford due process, including a notice of
10 and an opportunity to file an objection to the release of the record
11 or report to all interested parties.

12 (4) A juvenile case file, any portion thereof, and information
13 relating to the content of the juvenile case file, may not be
14 disseminated by the receiving agencies to any persons or agencies,
15 other than those persons or agencies authorized to receive
16 documents pursuant to this section. Further, a juvenile case file,
17 any portion thereof, and information relating to the content of the
18 juvenile case file, may not be made as an attachment to any other
19 documents without the prior approval of the presiding judge of the
20 juvenile court, unless it is used in connection with and in the course
21 of a criminal investigation or a proceeding brought to declare a
22 person a dependent child or ward of the juvenile court.

23 (5) Individuals listed in subparagraphs (A), (B), (C), (D), (E),
24 (F), (H), and (I) of paragraph (1) may also receive copies of the
25 case file. In these circumstances, the requirements of paragraph
26 (4) shall continue to apply to the information received.

27 (b) (1) While the Legislature reaffirms its belief that juvenile
28 court records, in general, should be confidential, it is the intent of
29 the Legislature in enacting this subdivision to provide for a limited
30 exception to juvenile court record confidentiality to promote more
31 effective communication among juvenile courts, family courts,
32 law enforcement agencies, and schools to ensure the rehabilitation
33 of juvenile criminal offenders as well as to lessen the potential for
34 drug use, violence, other forms of delinquency, and child abuse.

35 (2) (A) Notwithstanding subdivision (a), written notice that a
36 minor enrolled in a public school, kindergarten to grade 12,
37 inclusive, has been found by a court of competent jurisdiction to
38 have committed any felony or any misdemeanor involving curfew,
39 gambling, alcohol, drugs, tobacco products, carrying of weapons,
40 a sex offense listed in Section 290 of the Penal Code, assault or

1 battery, larceny, vandalism, or graffiti shall be provided by the
2 court, within seven days, to the superintendent of the school district
3 of attendance. Written notice shall include only the offense found
4 to have been committed by the minor and the disposition of the
5 minor's case. This notice shall be expeditiously transmitted by the
6 district superintendent to the principal at the school of attendance.
7 The principal shall expeditiously disseminate the information to
8 those counselors directly supervising or reporting on the behavior
9 or progress of the minor. In addition, the principal shall disseminate
10 the information to any teacher or administrator directly supervising
11 or reporting on the behavior or progress of the minor whom the
12 principal believes needs the information to work with the pupil in
13 an appropriate fashion, to avoid being needlessly vulnerable or to
14 protect other persons from needless vulnerability.

15 (B) Any information received by a teacher, counselor, or
16 administrator under this subdivision shall be received in confidence
17 for the limited purpose of rehabilitating the minor and protecting
18 students and staff, and shall not be further disseminated by the
19 teacher, counselor, or administrator, except insofar as
20 communication with the juvenile, his or her parents or guardians,
21 law enforcement personnel, and the juvenile's probation officer
22 is necessary to effectuate the juvenile's rehabilitation or to protect
23 students and staff.

24 (C) An intentional violation of the confidentiality provisions of
25 this paragraph is a misdemeanor punishable by a fine not to exceed
26 five hundred dollars (\$500).

27 (3) If a minor is removed from public school as a result of the
28 court's finding described in subdivision (b), the superintendent
29 shall maintain the information in a confidential file and shall defer
30 transmittal of the information received from the court until the
31 minor is returned to public school. If the minor is returned to a
32 school district other than the one from which the minor came, the
33 parole or probation officer having jurisdiction over the minor shall
34 so notify the superintendent of the last district of attendance, who
35 shall transmit the notice received from the court to the
36 superintendent of the new district of attendance.

37 (c) Each probation report filed with the court concerning a minor
38 whose record is subject to dissemination pursuant to subdivision
39 (b) shall include on the face sheet the school at which the minor
40 is currently enrolled. The county superintendent shall provide the

1 court with a listing of all of the schools within each school district,
2 within the county, along with the name and mailing address of
3 each district superintendent.

4 (d) (1) Each notice sent by the court pursuant to subdivision
5 (b) shall be stamped with the instruction: “Unlawful Dissemination
6 Of This Information Is A Misdemeanor.” Any information received
7 from the court shall be kept in a separate confidential file at the
8 school of attendance and shall be transferred to the minor’s
9 subsequent schools of attendance and maintained until the minor
10 graduates from high school, is released from juvenile court
11 jurisdiction, or reaches the age of 18 years, whichever occurs first.
12 After that time the confidential record shall be destroyed. At any
13 time after the date by which a record required to be destroyed by
14 this section should have been destroyed, the minor or his or her
15 parent or guardian shall have the right to make a written request
16 to the principal of the school that the minor’s school records be
17 reviewed to ensure that the record has been destroyed. Upon
18 completion of any requested review and no later than 30 days after
19 the request for the review was received, the principal or his or her
20 designee shall respond in writing to the written request and either
21 shall confirm that the record has been destroyed or, if the record
22 has not been destroyed, shall explain why destruction has not yet
23 occurred.

24 (2) Except as provided in paragraph (2) of subdivision (b), no
25 liability shall attach to any person who transmits or fails to transmit
26 any notice or information required under subdivision (b).

27 (e) For purposes of this section, a “juvenile case file” means a
28 petition filed in any juvenile court proceeding, reports of the
29 probation officer, and all other documents filed in that case or
30 made available to the probation officer in making his or her report,
31 or to the judge, referee, or other hearing officer, and thereafter
32 retained by the probation officer, judge, referee, or other hearing
33 officer.

34 (f) The persons described in subparagraphs (A), (E), (F), (H),
35 (K), (L), (M), and (N) of paragraph (1) of subdivision (a) include
36 persons serving in a similar capacity for an Indian tribe, reservation,
37 or tribal court when the case file involves a child who is a member
38 of, or who is eligible for membership in, that tribe.

O