

Introduced by Senator Liu

February 3, 2016

An act to amend Sections 319 and 361.4 of the Welfare and Institutions Code, relating to dependency proceedings.

LEGISLATIVE COUNSEL'S DIGEST

SB 942, as introduced, Liu. Dependency proceedings: relative caregivers.

Existing law establishes the jurisdiction of the juvenile court, which may adjudge a child to be a dependent of the court under certain circumstances, including when the child suffered, or there is a substantial risk that the child will suffer, serious physical harm, or a parent fails to provide the child with adequate food, clothing, shelter, or medical treatment. Existing law establishes the grounds for removal of a dependent child from the custody of his or her parents or guardian, and establishes procedures to determine placement of a dependent child. Existing law prescribes various hearings, including specified review hearings, and other procedures for these purposes. Existing law requires a social worker to conduct specified assessments for purposes of placement.

This bill would establish additional procedures for the temporary placement of a child with an able and willing relative under circumstances in which the child has not yet been placed with a relative prior to his or her initial hearing. The bill would require a social worker to conduct an assessment under those provisions, and establish procedures to hold a hearing for the consideration of that assessment and temporary placement.

Existing law requires, whenever a child may be placed in the home of a relative, or the home of any prospective guardian or other person

who is not a licensed or certified foster parent, the court or social worker placing the child to cause a state-level criminal records check to be conducted by an appropriate government agency through the California Law Enforcement Telecommunications System.

This bill would require that criminal records check to be conducted within a specified timeframe. The bill would require various hearings if the county fails to meet those timeframes, and would authorize placement under circumstances in which the county is found to have abused its discretion, as specified.

Existing law authorizes a county to issue a criminal records exemption from those criminal records check requirements only if that county has been granted permission by the Director of Social Services to issue criminal records exemptions.

In a county that has issued a criminal records exemption, this bill would require the county to actively assist a person in locating and obtaining any documents required for the criminal records exemption.

By imposing additional duties on county welfare agencies pursuant to various provisions of this bill, the 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 no reimbursement is required by this act for a specified reason.

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. The Legislature finds and declares that placement
- 2 with able and willing relatives at the earliest point in time is in the
- 3 best interest of a child in the dependency system. Along those
- 4 lines, research has shown that a child in the dependency system
- 5 tends to be more emotionally well off when placed with his or her
- 6 relatives, and reunification with his or her parents is routinely
- 7 enhanced by placement with those relatives.
- 8 SEC. 2. Section 319 of the Welfare and Institutions Code is
- 9 amended to read:
- 10 319. (a) At the initial petition hearing, the court shall examine
- 11 the child's parents, guardians, or other persons having relevant

1 knowledge and hear the relevant evidence as the child, the child's
2 parents or guardians, the petitioner, or their counsel desires to
3 present. The court may examine the child, as provided in Section
4 350.

5 (b) The social worker shall report to the court on the reasons
6 why the child has been removed from the parent's physical custody,
7 the need, if any, for continued detention, the available services
8 and the referral methods to those services that could facilitate the
9 return of the child to the custody of the child's parents or guardians,
10 and whether there are any relatives who are able and willing to
11 take temporary physical custody of the child. The court shall order
12 the release of the child from custody unless a prima facie showing
13 has been made that the child comes within Section 300, the court
14 finds that continuance in the parent's or guardian's home is
15 contrary to the child's welfare, and any of the following
16 circumstances exist:

17 (1) There is a substantial danger to the physical health of the
18 child or the child is suffering severe emotional damage, and there
19 are no reasonable means by which the child's physical or emotional
20 health may be protected without removing the child from the
21 parent's or guardian's physical custody.

22 (2) There is substantial evidence that a parent, guardian, or
23 custodian of the child is likely to flee the jurisdiction of the court.

24 (3) The child has left a placement in which he or she was placed
25 by the juvenile court.

26 (4) The child indicates an unwillingness to return home, if the
27 child has been physically or sexually abused by a person residing
28 in the home.

29 (c) If the matter is continued pursuant to Section 322 or for any
30 other reason, the court shall find that the continuance of the child
31 in the parent's or guardian's home is contrary to the child's welfare
32 at the initial petition hearing or order the release of the child from
33 custody.

34 (d) (1) The court shall also make a determination on the record,
35 referencing the social worker's report or other evidence relied
36 upon, as to whether reasonable efforts were made to prevent or
37 eliminate the need for removal of the child from his or her home,
38 pursuant to subdivision (b) of Section 306, and whether there are
39 available services that would prevent the need for further detention.
40 Services to be considered for purposes of making this determination

1 are case management, counseling, emergency shelter care,
2 emergency in-home caretakers, out-of-home respite care, teaching
3 and demonstrating homemakers, parenting training, transportation,
4 and any other child welfare services authorized by the State
5 Department of Social Services pursuant to Chapter 5 (commencing
6 with Section 16500) of Part 4 of Division 9. The court shall also
7 review whether the social worker has considered whether a referral
8 to public assistance services pursuant to Chapter 2 (commencing
9 with Section 11200) and Chapter 7 (commencing with Section
10 14000) of Part 3, Chapter 1 (commencing with Section 17000) of
11 Part 5, and Chapter 10 (commencing with Section 18900) of Part
12 6 of Division 9 would have eliminated the need to take temporary
13 custody of the child or would prevent the need for further detention.

14 (2) If the child can be returned to the custody of his or her parent
15 or guardian through the provision of those services, the court shall
16 place the child with his or her parent or guardian and order that
17 the services shall be provided. If the child cannot be returned to
18 the physical custody of his or her parent or guardian, the court
19 shall determine if there is a relative who is able and willing to care
20 for the child, and has been assessed pursuant to paragraph (1) of
21 subdivision (d) of Section 309.

22 (3) In order to preserve the bond between the child and the
23 parent and to facilitate family reunification, the court shall consider
24 whether the child can be returned to the custody of his or her parent
25 who is enrolled in a certified substance abuse treatment facility
26 that allows a dependent child to reside with his or her parent. The
27 fact that the parent is enrolled in a certified substance abuse
28 treatment facility that allows a dependent child to reside with his
29 or her parent shall not be, for that reason alone, prima facie
30 evidence of substantial danger. The court shall specify the factual
31 basis for its conclusion that the return of the child to the custody
32 of his or her parent would pose a substantial danger or would not
33 pose a substantial danger to the physical health, safety, protection,
34 or physical or emotional well-being of the child.

35 (e) If a court orders a child detained, the court shall state the
36 facts on which the decision is based, specify why the initial removal
37 was necessary, reference the social worker's report or other
38 evidence relied upon to make its determination whether
39 continuance in the home of the parent or legal guardian is contrary
40 to the child's welfare, order temporary placement and care of the

1 child to be vested with the county child welfare department pending
2 the hearing held pursuant to Section 355 or further order of the
3 court, and order services to be provided as soon as possible to
4 reunify the child and his or her family if appropriate.

5 (f) (1) If the child is not released from custody, the court may
6 order that the child shall be placed in the assessed home of a
7 relative, in an emergency shelter or other suitable licensed place,
8 in a place exempt from licensure designated by the juvenile court,
9 or in the assessed home of a nonrelative extended family member
10 as defined in Section 362.7 for a period not to exceed 15 judicial
11 days. A runaway and homeless youth shelter licensed by the State
12 Department of Social Services pursuant to Section 1502.35 of the
13 Health and Safety Code shall not be a placement option pursuant
14 to this section.

15 (2) As used in this section, “relative” means an adult who is
16 related to the child by blood, adoption, or affinity within the fifth
17 degree of kinship, including stepparents, stepsiblings, and all
18 relatives whose status is preceded by the words “great,”
19 “great-great,” or “grand,” or the spouse of any of these persons,
20 even if the marriage was terminated by death or dissolution.
21 However, only the following relatives shall be given preferential
22 consideration for placement of the child: an adult who is a
23 grandparent, aunt, uncle, or sibling of the child.

24 (3) The court shall consider the recommendations of the social
25 worker based on the assessment pursuant to paragraph (1) of
26 subdivision (d) of Section 309 of the relative’s home, including
27 the results of a criminal records check and prior child abuse
28 allegations, if any, prior to ordering that the child be placed with
29 a relative. The court shall order the parent to disclose to the social
30 worker the names, residences, and any known identifying
31 information of any maternal or paternal relatives of the child. The
32 social worker shall initiate the assessment pursuant to Section
33 361.3 of any relative to be considered for continuing placement.

34 (4) *If the child is not placed with a relative at the time of the*
35 *initial hearing and an able and willing relative is available and*
36 *requests temporary placement of the child, the court shall order*
37 *the social worker to conduct an assessment pursuant to paragraph*
38 *(1) of subdivision (d) of Section 309. Within seven calendar days,*
39 *the social worker shall provide the results of the assessment to the*
40 *court, the parent or guardian, the child’s attorney, and the child,*

1 *if the child is 10 years of age or older. The child or his or her*
2 *parent or guardian may request a hearing to consider the*
3 *recommendations of the social worker based on the assessment.*
4 *The court shall hold a hearing not later than 10 court days after*
5 *a request is made pursuant to this paragraph. Consistent with the*
6 *Legislature's intent that a child be placed immediately with a*
7 *responsible relative, this paragraph shall not be construed to limit*
8 *the social worker's authority to place a child in the home of an*
9 *appropriate relative or nonrelative extended family member*
10 *pending receipt of the results of the assessment or the hearing.*

11 (g) (1) At the initial hearing upon the petition filed in
12 accordance with subdivision (c) of Rule 5.520 of the California
13 Rules of Court or anytime thereafter up until the time that the
14 minor is adjudged a dependent child of the court or a finding is
15 made dismissing the petition, the court may temporarily limit the
16 right of the parent or guardian to make educational or
17 developmental services decisions for the child and temporarily
18 appoint a responsible adult to make educational or developmental
19 services decisions for the child if all of the following conditions
20 are found:

21 (A) The parent or guardian is unavailable, unable, or unwilling
22 to exercise educational or developmental services rights for the
23 child.

24 (B) The county placing agency has made diligent efforts to
25 locate and secure the participation of the parent or guardian in
26 educational or developmental services decisionmaking.

27 (C) The child's educational and developmental services needs
28 cannot be met without the temporary appointment of a responsible
29 adult.

30 (2) If the court limits the parent's educational rights under this
31 subdivision, the court shall determine whether there is a responsible
32 adult who is a relative, nonrelative extended family member, or
33 other adult known to the child and who is available and willing to
34 serve as the child's educational representative before appointing
35 an educational representative or surrogate who is not known to the
36 child.

37 (3) If the court cannot identify a responsible adult to make
38 educational decisions for the child and the appointment of a
39 surrogate parent, as defined in subdivision (a) of Section 56050
40 of the Education Code, is not warranted, the court may, with the

1 input of any interested person, make educational decisions for the
2 child. If the child is receiving services from a regional center, the
3 provision of any developmental services related to the court's
4 decision shall be consistent with the child's individual program
5 plan and pursuant to the provisions of the Lanterman
6 Developmental Disabilities Services Act (Division 4.5
7 (commencing with Section 4500)). If the court cannot identify a
8 responsible adult to make developmental services decisions for
9 the child, the court may, with the input of any interested person,
10 make developmental services decisions for the child. If the court
11 makes educational or developmental services decisions for the
12 child, the court shall also issue appropriate orders to ensure that
13 every effort is made to identify a responsible adult to make future
14 educational or developmental services decisions for the child.

15 (4) A temporary appointment of a responsible adult and
16 temporary limitation on the right of the parent or guardian to make
17 educational or developmental services decisions for the child shall
18 be specifically addressed in the court order. An order made under
19 this section shall expire at the conclusion of the hearing held
20 pursuant to Section 361 or upon dismissal of the petition. Upon
21 the entering of disposition orders, additional needed limitation on
22 the parent's or guardian's educational or developmental services
23 rights shall be addressed pursuant to Section 361.

24 (5) This section does not remove the obligation to appoint
25 surrogate parents for students with disabilities who are without
26 parental representation in special education procedures as required
27 by state and federal law, including Section 1415(b)(2) of Title 20
28 of the United States Code, Section 56050 of the Education Code,
29 Section 7579.5 of the Government Code, and Rule 5.650 of the
30 California Rules of Court.

31 (6) If the court appoints a developmental services decisionmaker
32 pursuant to this section, he or she shall have the authority to access
33 the child's information and records pursuant to subdivision (u) of
34 Section 4514 and subdivision (y) of Section 5328, and to act on
35 the child's behalf for the purposes of the individual program plan
36 process pursuant to Sections 4646, 4646.5, and 4648 and the fair
37 hearing process pursuant to Chapter 7 (commencing with Section
38 4700), and as set forth in the court order.

39 SEC. 3. Section 361.4 of the Welfare and Institutions Code is
40 amended to read:

1 361.4. (a) Prior to placing a child in the home of a relative, or
2 the home of any prospective guardian or other person who is not
3 a licensed or certified foster parent, the county social worker shall
4 visit the home to ascertain the appropriateness of the placement.

5 (b) (1) Whenever a child may be placed in the home of a
6 relative, or the home of any prospective guardian or other person
7 who is not a licensed or certified foster parent, the court or county
8 social worker placing the child shall cause a state-level criminal
9 records check to be conducted by an appropriate government
10 agency through the California Law Enforcement
11 Telecommunications System (CLETS) pursuant to Section 16504.5.
12 The criminal records check shall be conducted with regard to all
13 persons over 18 years of age living in the home, and on any other
14 person over 18 years of age, other than professionals providing
15 professional services to the child, known to the placing entity who
16 may have significant contact with the child, including any person
17 who has a familial or intimate relationship with any person living
18 in the home. A criminal records check may be conducted pursuant
19 to this section on any person over 14 years of age living in the
20 home who the county social worker believes may have a criminal
21 record. Within 10 calendar days following the criminal records
22 check conducted through the California Law Enforcement
23 Telecommunications System, the social worker shall ensure that
24 a fingerprint clearance check of the relative and any other person
25 whose criminal record was obtained pursuant to this subdivision
26 is initiated through the Department of Justice to ensure the accuracy
27 of the criminal records check conducted through the California
28 Law Enforcement Telecommunications System and shall review
29 the results of any criminal records check to assess the safety of the
30 home. The Department of Justice shall forward fingerprint requests
31 for federal-level criminal history information to the Federal Bureau
32 of Investigation pursuant to this section.

33 (2) An identification card from a foreign consulate or foreign
34 passport shall be considered a valid form of identification for
35 conducting a criminal records check and fingerprint clearance
36 check under this subdivision and under subdivision (c).

37 (c) Whenever a child may be placed in the home of a relative,
38 or a prospective guardian or other person who is not a licensed or
39 certified foster parent, the county social worker shall cause a check
40 of the Child Abuse Central Index pursuant to subdivision (a) of

Section 11170 of the Penal Code to be requested from the Department of Justice. The Child Abuse Central Index check shall be conducted on all persons over 18 years of age living in the home. For any application received on or after January 1, 2008, if any person in the household is 18 years of age or older and has lived in another state in the preceding five years, the county social worker shall check the other state's child abuse and neglect registry to the extent required by federal law.

(d) (1) If the results of the California and federal criminal records check indicates that the person has no criminal record, the county social worker and court may consider the home of the relative, prospective guardian, or other person who is not a licensed or certified foster parent for placement of a child.

(2) If the criminal records check indicates that the person has been convicted of a crime that the Director of Social Services cannot grant an exemption for under Section 1522 of the Health and Safety Code, the child shall not be placed in the home. If the criminal records check indicates that the person has been convicted of a crime that the Director of Social Services may grant an exemption for under Section 1522 of the Health and Safety Code, the child shall not be placed in the home unless a criminal records exemption has been granted by the county, based on substantial and convincing evidence to support a reasonable belief that the person with the criminal conviction is of such good character as to justify the placement and not present a risk of harm to the child pursuant to paragraph (3).

(3) (A) A county may issue a criminal records exemption only if that county has been granted permission by the Director of Social Services to issue criminal records exemptions. The county may file a request with the Director of Social Services seeking permission for the county to establish a procedure to evaluate and grant appropriate individual criminal records exemptions for persons described in subdivision (b). The director shall grant or deny the county's request within 14 days of receipt. The county shall evaluate individual criminal records in accordance with the standards and limitations set forth in paragraph (1) of subdivision (g) of Section 1522 of the Health and Safety Code, and ~~in no event shall the county~~ *not* place a child in the home of a person who is ineligible for an exemption under that provision. *The county shall, to the extent possible, actively assist the person to locate and obtain*

1 *any documents required for the criminal records exemption,*
2 *including having a social worker contact any other government*
3 *entity directly to obtain any required arrest reports or court*
4 *dispositions.*

5 (B) The department shall monitor county implementation of the
6 authority to grant an exemption under this paragraph to ensure that
7 the county evaluates individual criminal records and allows or
8 disallows placements according to the standards set forth in
9 paragraph (1) of subdivision (g) of Section 1522 of the Health and
10 Safety Code.

11 (C) *If a court orders the county to assess a person described in*
12 *subdivision (a), the county shall complete the assessment process,*
13 *including any exemptions and waivers, within 30 calendar days.*
14 *If the process is not complete within 30 calendar days of the court*
15 *order, the court may set an order to show cause hearing. The*
16 *denial of an exemption or waiver due to the failure of the county*
17 *to obtain necessary governmental documents shall not be*
18 *considered completion of the assessment process. Sixty calendar*
19 *days after the court order to assess the person, the court may*
20 *conduct a hearing to consider granting the exemption or waiver,*
21 *and the court may order the child to be placed with the person. If*
22 *an exemption or waiver is denied, and any administrative process*
23 *is not complete within 60 calendar days of the court ordering the*
24 *county to conduct the assessment, the court may conduct a hearing*
25 *to determine if the county has abused its discretion. At the end of*
26 *that hearing, the court may order the child to be placed with the*
27 *person if it finds that the county abused its discretion, the*
28 *placement is appropriate, and the placement is in the best interest*
29 *of the child.*

30 (4) The department shall conduct an evaluation of the
31 implementation of paragraph (3) through random sampling of
32 county exemption decisions.

33 (5) The State Department of Social Services shall not evaluate
34 or grant criminal records exemption requests for persons described
35 in subdivision (b), unless the exemption request is made by an
36 Indian tribe pursuant to subdivision (f).

37 (6) If a county has not requested, or has not been granted,
38 permission by the State Department of Social Services to establish
39 a procedure to evaluate and grant criminal records exemptions,
40 the county shall not place a child into the home of a person

1 described in subdivision (b) if any person residing in the home has
2 been convicted of a crime other than a minor traffic violation,
3 except as provided in subdivision (f).

4 (e) Nothing in this section shall preclude a county from
5 conducting a criminal background check that the county is
6 otherwise authorized to conduct using fingerprints.

7 (f) The State Department of Social Services shall evaluate a
8 request from an Indian tribe to exempt a crime that is exemptible
9 under Section 1522 of the Health and Safety Code, if needed, to
10 allow placement into an Indian home that the tribe has designated
11 for placement under the federal Indian Child Welfare Act (25
12 U.S.C. Sec. 1901 et seq.). However, if the county with jurisdiction
13 over the child that is the subject of the tribe's request has
14 established an approved procedure pursuant to paragraph (3) of
15 subdivision (d), the tribe may request that the county evaluate the
16 exemption request. Once a tribe has elected to have the exemption
17 request reviewed by either the State Department of Social Services
18 or the county, the exemption decision may only be made by that
19 entity. Nothing in this subdivision limits the duty of a county social
20 worker to evaluate the home for placement or to gather information
21 needed to evaluate an exemption request.

22 SEC. 4. To the extent that this act has an overall effect of
23 increasing the costs already borne by a local agency for programs
24 or levels of service mandated by the 2011 Realignment Legislation
25 within the meaning of Section 36 of Article XIII of the California
26 Constitution, it shall apply to local agencies only to the extent that
27 the state provides annual funding for the cost increase. Any new
28 program or higher level of service provided by a local agency
29 pursuant to this act above the level for which funding has been
30 provided shall not require a subvention of funds by the state nor
31 otherwise be subject to Section 6 of Article XIII B of the California
32 Constitution.