

AMENDED IN SENATE APRIL 19, 2016
AMENDED IN SENATE MARCH 31, 2016

SENATE BILL

No. 942

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 amended, 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, as specified. The bill

would establish procedures to hold a hearing for the consideration of the recommendations of the social worker based on the assessment.

Under existing law, if a child is proposed to 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 is required to have a state-level criminal records check conducted by an appropriate government agency through the California Law Enforcement Telecommunications System. Existing law authorizes a county to issue a criminal records exemption for a crime for which the relative, prospective guardian, or other person has been convicted only if that county has been granted permission by the Director of Social Services to issue exemptions.

This bill would require a county seeking to issue a criminal records exemption to ~~actively~~ assist the relative, prospective guardian, or other person in locating and obtaining any documents required for the criminal records exemption. The bill would also require the county to complete the assessment process, including any exemptions and waivers, within a specified timeframe. The bill would authorize the court to conduct a hearing if the assessment process is not complete, as specified, to determine if the county has abused its discretion.

By imposing these additional duties on county welfare agencies, ~~the~~ *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 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.

1 SEC. 2. Section 319 of the Welfare and Institutions Code is
2 amended to read:

3 319. (a) At the initial petition hearing, the court shall examine
4 the child's parents, guardians, or other persons having relevant
5 knowledge and hear the relevant evidence as the child, the child's
6 parents or guardians, the petitioner, or their counsel desires to
7 present. The court may examine the child, as provided in Section
8 350.

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

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

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

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

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

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

38 (d) (1) The court shall also make a determination on the record,
39 referencing the social worker's report or other evidence relied
40 upon, as to whether reasonable efforts were made to prevent or

1 eliminate the need for removal of the child from his or her home,
2 pursuant to subdivision (b) of Section 306, and whether there are
3 available services that would prevent the need for further detention.
4 Services to be considered for purposes of making this determination
5 are case management, counseling, emergency shelter care,
6 emergency in-home caretakers, out-of-home respite care, teaching
7 and demonstrating homemakers, parenting training, transportation,
8 and any other child welfare services authorized by the State
9 Department of Social Services pursuant to Chapter 5 (commencing
10 with Section 16500) of Part 4 of Division 9. The court shall also
11 review whether the social worker has considered whether a referral
12 to public assistance services pursuant to Chapter 2 (commencing
13 with Section 11200) and Chapter 7 (commencing with Section
14 14000) of Part 3, Chapter 1 (commencing with Section 17000) of
15 Part 5, and Chapter 10 (commencing with Section 18900) of Part
16 6 of Division 9 would have eliminated the need to take temporary
17 custody of the child or would prevent the need for further detention.

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

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

39 (e) If a court orders a child detained, the court shall state the
40 facts on which the decision is based, specify why the initial removal

1 was necessary, reference the social worker's report or other
2 evidence relied upon to make its determination whether
3 continuance in the home of the parent or legal guardian is contrary
4 to the child's welfare, order temporary placement and care of the
5 child to be vested with the county child welfare department pending
6 the hearing held pursuant to Section 355 or further order of the
7 court, and order services to be provided as soon as possible to
8 reunify the child and his or her family if appropriate.

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

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

28 (3) The court shall consider the recommendations of the social
29 worker based on the assessment pursuant to paragraph (1) of
30 subdivision (d) of Section 309 of the relative's home, including
31 the results of a criminal records check and prior child abuse
32 allegations, if any, prior to ordering that the child be placed with
33 a relative. The court shall order the parent to disclose to the social
34 worker the names, residences, and any known identifying
35 information of any maternal or paternal relatives of the child. The
36 social worker shall initiate the assessment pursuant to Section
37 361.3 of any relative to be considered for continuing placement.

38 (4) (A) If the child is not placed with a relative at the time of
39 the initial hearing and an able and willing relative is available and
40 requests temporary placement of the child, the court shall order

1 the social worker to conduct an assessment pursuant to paragraph
2 (1) of subdivision (d) of Section 309. Within seven calendar days,
3 except as provided in subparagraph (B), the social worker shall
4 provide the results or the status of the assessment, which shall
5 include an in-home inspection to assess the safety of the home and
6 the ability of the relative to care for the child's needs, and a
7 consideration of the results of a criminal records check conducted
8 through the California Law Enforcement Telecommunications
9 System (CLETS) pursuant to Section 16504.5 and a check of the
10 Child Abuse Central Index (CACI) pursuant to subdivision (a) of
11 Section 11170 of the Penal Code, to the court, the parent or
12 guardian, the child's attorney, and the child, if the child is 10 years
13 of age or older. The child or his or her parent or guardian may
14 request a hearing to consider the recommendations of the social
15 worker based on the assessment. The court shall hold a hearing
16 not later than 10 court days after a request is made pursuant to this
17 paragraph. Consistent with the Legislature's intent that a child be
18 placed immediately with a responsible relative, this paragraph
19 shall not be construed to limit the social worker's authority to place
20 a child in the home of an appropriate relative or nonrelative
21 extended family member pending receipt of the results of the
22 assessment or the hearing.

23 (B) The period of seven calendar days described in subparagraph
24 (A) applies to a social worker providing the results or the status
25 of the assessment in response to *a request made by* a maximum
26 of two ~~requests made by relatives~~ *relatives, upon an order of the*
27 *court pursuant to subparagraph (A)* for temporary placement of
28 the child. The period of seven calendar days does not apply to a
29 ~~response by a social worker to an additional request made by~~
30 ~~another relative.~~ *worker's duties pursuant to subdivision (e) of*
31 *Section 309.*

32 (g) (1) At the initial hearing upon the petition filed in
33 accordance with subdivision (c) of Rule 5.520 of the California
34 Rules of Court or anytime thereafter up until the time that the
35 minor is adjudged a dependent child of the court or a finding is
36 made dismissing the petition, the court may temporarily limit the
37 right of the parent or guardian to make educational or
38 developmental services decisions for the child and temporarily
39 appoint a responsible adult to make educational or developmental

1 services decisions for the child if all of the following conditions
2 are found:

3 (A) The parent or guardian is unavailable, unable, or unwilling
4 to exercise educational or developmental services rights for the
5 child.

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

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

12 (2) If the court limits the parent's educational rights under this
13 subdivision, the court shall determine whether there is a responsible
14 adult who is a relative, nonrelative extended family member, or
15 other adult known to the child and who is available and willing to
16 serve as the child's educational representative before appointing
17 an educational representative or surrogate who is not known to the
18 child.

19 (3) If the court cannot identify a responsible adult to make
20 educational decisions for the child and the appointment of a
21 surrogate parent, as defined in subdivision (a) of Section 56050
22 of the Education Code, is not warranted, the court may, with the
23 input of any interested person, make educational decisions for the
24 child. If the child is receiving services from a regional center, the
25 provision of any developmental services related to the court's
26 decision shall be consistent with the child's individual program
27 plan and pursuant to the provisions of the Lanterman
28 Developmental Disabilities Services Act (Division 4.5
29 (commencing with Section 4500)). If the court cannot identify a
30 responsible adult to make developmental services decisions for
31 the child, the court may, with the input of any interested person,
32 make developmental services decisions for the child. If the court
33 makes educational or developmental services decisions for the
34 child, the court shall also issue appropriate orders to ensure that
35 every effort is made to identify a responsible adult to make future
36 educational or developmental services decisions for the child.

37 (4) A temporary appointment of a responsible adult and
38 temporary limitation on the right of the parent or guardian to make
39 educational or developmental services decisions for the child shall
40 be specifically addressed in the court order. An order made under

1 this section shall expire at the conclusion of the hearing held
2 pursuant to Section 361 or upon dismissal of the petition. Upon
3 the entering of disposition orders, additional needed limitation on
4 the parent's or guardian's educational or developmental services
5 rights shall be addressed pursuant to Section 361.

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

13 (6) If the court appoints a developmental services decisionmaker
14 pursuant to this section, he or she shall have the authority to access
15 the child's information and records pursuant to subdivision (u) of
16 Section 4514 and subdivision (y) of Section 5328, and to act on
17 the child's behalf for the purposes of the individual program plan
18 process pursuant to Sections 4646, 4646.5, and 4648 and the fair
19 hearing process pursuant to Chapter 7 (commencing with Section
20 4700), and as set forth in the court order.

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

23 361.4. (a) Prior to placing a child in the home of a relative, or
24 the home of any prospective guardian or other person who is not
25 a licensed or certified foster parent, the county social worker shall
26 visit the home to ascertain the appropriateness of the placement.

27 (b) (1) Whenever a child may be placed in the home of a
28 relative, or the home of any prospective guardian or other person
29 who is not a licensed or certified foster parent, the court or county
30 social worker placing the child shall cause a state-level criminal
31 records check to be conducted by an appropriate government
32 agency through the California Law Enforcement
33 Telecommunications System (CLETS) pursuant to Section 16504.5.
34 The criminal records check shall be conducted with regard to all
35 persons over 18 years of age living in the home, and on any other
36 person over 18 years of age, other than professionals providing
37 professional services to the child, known to the placing entity who
38 may have significant contact with the child, including any person
39 who has a familial or intimate relationship with any person living
40 in the home. A criminal records check may be conducted pursuant

1 to this section on any person over 14 years of age living in the
2 home who the county social worker believes may have a criminal
3 record. Within 10 calendar days following the criminal records
4 check conducted through the California Law Enforcement
5 Telecommunications System, the social worker shall ensure that
6 a fingerprint clearance check of the relative and any other person
7 whose criminal record was obtained pursuant to this subdivision
8 is initiated through the Department of Justice to ensure the accuracy
9 of the criminal records check conducted through the California
10 Law Enforcement Telecommunications System and shall review
11 the results of any criminal records check to assess the safety of the
12 home. The Department of Justice shall forward fingerprint requests
13 for federal-level criminal history information to the Federal Bureau
14 of Investigation pursuant to this section.

15 (2) An identification card from a foreign consulate or foreign
16 passport shall be considered a valid form of identification for
17 conducting a criminal records check and fingerprint clearance
18 check under this subdivision and under subdivision (c).

19 (c) Whenever a child may be placed in the home of a relative,
20 or a prospective guardian or other person who is not a licensed or
21 certified foster parent, the county social worker shall cause a check
22 of the Child Abuse Central Index pursuant to subdivision (a) of
23 Section 11170 of the Penal Code to be requested from the
24 Department of Justice. The Child Abuse Central Index check shall
25 be conducted on all persons over 18 years of age living in the
26 home. For any application received on or after January 1, 2008, if
27 any person in the household is 18 years of age or older and has
28 lived in another state in the preceding five years, the county social
29 worker shall check the other state's child abuse and neglect registry
30 to the extent required by federal law.

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

36 (2) If the criminal records check indicates that the person has
37 been convicted of a crime that the Director of Social Services
38 cannot grant an exemption for under Section 1522 of the Health
39 and Safety Code, the child shall not be placed in the home. If the
40 criminal records check indicates that the person has been convicted

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

9 (3) (A) A county may issue a criminal records exemption only
10 if that county has been granted permission by the Director of Social
11 Services to issue criminal records exemptions. The county may
12 file a request with the Director of Social Services seeking
13 permission for the county to establish a procedure to evaluate and
14 grant appropriate individual criminal records exemptions for
15 persons described in subdivision (b). The director shall grant or
16 deny the county's request within 14 days of receipt. The county
17 shall evaluate individual criminal records in accordance with the
18 standards and limitations set forth in paragraph (1) of subdivision
19 (g) of Section 1522 of the Health and Safety Code, and shall not
20 place a child in the home of a person who is ineligible for an
21 exemption under that provision. The county shall, to the extent
22 possible, ~~actively~~ assist the person to locate and obtain any
23 documents required for the criminal records exemption, ~~including~~
24 *which may include* having a social worker contact any other
25 government entity directly to obtain any required arrest reports or
26 court dispositions.

27 (B) The department shall monitor county implementation of the
28 authority to grant an exemption under this paragraph to ensure that
29 the county evaluates individual criminal records and allows or
30 disallows placements according to the standards set forth in
31 paragraph (1) of subdivision (g) of Section 1522 of the Health and
32 Safety Code.

33 (C) If a court orders the county to assess a person described in
34 subdivision (a), the county shall complete the assessment process,
35 including any exemptions and waivers, within 30 calendar days.
36 If the process is not complete within 30 calendar days of the court
37 order, the court may set an order to show cause hearing. If the
38 assessment process is not complete, an exemption or waiver is
39 denied, or any administrative process is not complete within 60
40 calendar days of the court ordering the county to conduct the

1 assessment, the court may conduct a hearing to determine if the
2 county has abused its discretion.

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

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

10 (6) If a county has not requested, or has not been granted,
11 permission by the State Department of Social Services to establish
12 a procedure to evaluate and grant criminal records exemptions,
13 the county shall not place a child into the home of a person
14 described in subdivision (b) if any person residing in the home has
15 been convicted of a crime other than a minor traffic violation,
16 except as provided in subdivision (f).

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

20 (f) The State Department of Social Services shall evaluate a
21 request from an Indian tribe to exempt a crime that is exemptible
22 under Section 1522 of the Health and Safety Code, if needed, to
23 allow placement into an Indian home that the tribe has designated
24 for placement under the federal Indian Child Welfare Act (25
25 U.S.C. Sec. 1901 et seq.). However, if the county with jurisdiction
26 over the child that is the subject of the tribe's request has
27 established an approved procedure pursuant to paragraph (3) of
28 subdivision (d), the tribe may request that the county evaluate the
29 exemption request. Once a tribe has elected to have the exemption
30 request reviewed by either the State Department of Social Services
31 or the county, the exemption decision may only be made by that
32 entity. Nothing in this subdivision limits the duty of a county social
33 worker to evaluate the home for placement or to gather information
34 needed to evaluate an exemption request.

35 ~~SEC. 4. To the extent that this act has an overall effect of~~
36 ~~increasing the costs already borne by a local agency for programs~~
37 ~~or levels of service mandated by the 2011 Realignment Legislation~~
38 ~~within the meaning of Section 36 of Article XIII of the California~~
39 ~~Constitution, it shall apply to local agencies only to the extent that~~
40 ~~the state provides annual funding for the cost increase. Any new~~

1 ~~program or higher level of service provided by a local agency~~
2 ~~pursuant to this act above the level for which funding has been~~
3 ~~provided shall not require a subvention of funds by the state nor~~
4 ~~otherwise be subject to Section 6 of Article XIII B of the California~~
5 ~~Constitution.~~

6 *SEC. 4. To the extent that this act has an overall effect of*
7 *increasing the costs already borne by a local agency for programs*
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9 *within the meaning of Section 36 of Article XIII of the California*
10 *Constitution, it shall apply to local agencies only to the extent that*
11 *the state provides annual funding for the cost increase. Any new*
12 *program or higher level of service provided by a local agency*
13 *pursuant to this act above the level for which funding has been*
14 *provided shall not require a subvention of funds by the state nor*
15 *otherwise be subject to Section 6 of Article XIII B of the California*
16 *Constitution.*