

AMENDED IN SENATE MAY 31, 2016  
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 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, 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~~ The social worker  
4 shall provide the results ~~or the status of the~~ *completed* assessment,  
5 which shall include an in-home inspection to assess the safety of  
6 the home and the ability of the relative to care for the child's needs,  
7 and a consideration of the results of a criminal records check  
8 conducted through the California Law Enforcement  
9 Telecommunications System (CLETS) pursuant to Section 16504.5  
10 and a check of the Child Abuse Central Index (CACI) pursuant to  
11 subdivision (a) of Section 11170 of the Penal Code, to the court,  
12 the parent or guardian, the child's attorney, and the child, if the  
13 child is 10 years of age or older. The child or his or her parent or  
14 guardian may request a hearing to consider the recommendations  
15 of the social worker based on the assessment. The court shall hold  
16 a hearing not later than 10 court days after a request is made  
17 pursuant to this paragraph. Consistent with the Legislature's intent  
18 that a child be placed immediately with a responsible relative, this  
19 paragraph shall not be construed to limit the social worker's  
20 authority to place a child in the home of an appropriate relative or  
21 nonrelative extended family member pending receipt of the results  
22 of the 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 of~~  
26 ~~two relatives, upon an order of the court pursuant to subparagraph~~  
27 ~~(A) for temporary placement of the child. The period of seven~~  
28 ~~calendar days does not apply to a social worker's duties pursuant~~  
29 ~~to subdivision (e) of Section 309.~~

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

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

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

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

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

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

35 (4) A temporary appointment of a responsible adult and  
36 temporary limitation on the right of the parent or guardian to make  
37 educational or developmental services decisions for the child shall  
38 be specifically addressed in the court order. An order made under  
39 this section shall expire at the conclusion of the hearing held  
40 pursuant to Section 361 or upon dismissal of the petition. Upon

1 the entering of disposition orders, additional needed limitation on  
2 the parent's or guardian's educational or developmental services  
3 rights shall be addressed pursuant to Section 361.

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

11 (6) If the court appoints a developmental services decisionmaker  
12 pursuant to this section, he or she shall have the authority to access  
13 the child's information and records pursuant to subdivision (u) of  
14 Section 4514 and subdivision (y) of Section 5328, and to act on  
15 the child's behalf for the purposes of the individual program plan  
16 process pursuant to Sections 4646, 4646.5, and 4648 and the fair  
17 hearing process pursuant to Chapter 7 (commencing with Section  
18 ~~4700~~, 4700) of *Division 4.5*, and as set forth in the court order.

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

21 361.4. (a) Prior to placing a child in the home of a relative, or  
22 the home of any prospective guardian or other person who is not  
23 a licensed or certified foster parent, the county social worker shall  
24 visit the home to ascertain the appropriateness of the placement.

25 (b) (1) Whenever a child may be placed in the home of a  
26 relative, or the home of any prospective guardian or other person  
27 who is not a licensed or certified foster parent, the court or county  
28 social worker placing the child shall cause a state-level criminal  
29 records check to be conducted by an appropriate government  
30 agency through the California Law Enforcement  
31 Telecommunications System (CLETS) pursuant to Section 16504.5.  
32 The criminal records check shall be conducted with regard to all  
33 persons over 18 years of age living in the home, and on any other  
34 person over 18 years of age, other than professionals providing  
35 professional services to the child, known to the placing entity who  
36 may have significant contact with the child, including any person  
37 who has a familial or intimate relationship with any person living  
38 in the home. A criminal records check may be conducted pursuant  
39 to this section on any person over 14 years of age living in the  
40 home who the county social worker believes may have a criminal



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

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

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

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

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

1 the child shall not be placed in the home unless a criminal records  
2 exemption has been granted by the county, based on substantial  
3 and convincing evidence to support a reasonable belief that the  
4 person with the criminal conviction is of such good character as  
5 to justify the placement and not present a risk of harm to the child  
6 pursuant to paragraph (3).

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

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

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

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

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

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

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

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

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

- 1 provided shall not require a subvention of funds by the state nor
- 2 otherwise be subject to Section 6 of Article XIII B of the California
- 3 Constitution.

O