

AMENDED IN ASSEMBLY AUGUST 1, 2016

AMENDED IN ASSEMBLY JUNE 15, 2016

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 require the court to order the social worker to immediately conduct an assessment, as specified, if the child is not placed with a relative at the time of the initial hearing and an able and willing relative is available and requests temporary placement of the child.

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 make an assessment of that person for placement pursuant to specified criteria, including conducting a home visit and having 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 qualifying 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. Existing law requires the State Department of Social Services to conduct an evaluation of the implementation provisions relating to criminal records exemptions, as specified.

This bill would require a county seeking to issue a criminal records exemption *under these provisions* to assist the relative, prospective guardian, or other person in locating and obtaining any documents required for the criminal records exemption. ~~The~~

If the court orders the county to make an assessment under these provisions, the bill would also require the county to complete the assessment process, including any exemptions and waivers, process within a specified timeframe. The bill would authorize the court to conduct a hearing if the assessment process is not complete, as specified, or an exemption or waiver is denied, 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.

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
12 knowledge and hear the relevant evidence as the child, the child's
13 parents or guardians, the petitioner, or their counsel desires to
14 present. The court may examine the child, as provided in Section
15 350.

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

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

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

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

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

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

9 (d) (1) The court shall also make a determination on the record,
10 referencing the social worker's report or other evidence relied
11 upon, as to whether reasonable efforts were made to prevent or
12 eliminate the need for removal of the child from his or her home,
13 pursuant to subdivision (b) of Section 306, and whether there are
14 available services that would prevent the need for further detention.
15 Services to be considered for purposes of making this determination
16 are case management, counseling, emergency shelter care,
17 emergency in-home caretakers, out-of-home respite care, teaching
18 and demonstrating homemakers, parenting training, transportation,
19 and any other child welfare services authorized by the State
20 Department of Social Services pursuant to Chapter 5 (commencing
21 with Section 16500) of Part 4 of Division 9. The court shall also
22 review whether the social worker has considered whether a referral
23 to public assistance services pursuant to Chapter 2 (commencing
24 with Section 11200) and Chapter 7 (commencing with Section
25 14000) of Part 3, Chapter 1 (commencing with Section 17000) of
26 Part 5, and Chapter 10 (commencing with Section 18900) of Part
27 6 of Division 9 would have eliminated the need to take temporary
28 custody of the child or would prevent the need for further detention.

29 (2) If the child can be returned to the custody of his or her parent
30 or guardian through the provision of those services, the court shall
31 place the child with his or her parent or guardian and order that
32 the services shall be provided. If the child cannot be returned to
33 the physical custody of his or her parent or guardian, the court
34 shall determine if there is a relative who is able and willing to care
35 for the child, and has been assessed pursuant to paragraph (1) of
36 subdivision (d) of Section 309.

37 (3) In order to preserve the bond between the child and the
38 parent and to facilitate family reunification, the court shall consider
39 whether the child can be returned to the custody of his or her parent
40 who is enrolled in a certified substance abuse treatment facility

1 that allows a dependent child to reside with his or her parent. The
2 fact that the parent is enrolled in a certified substance abuse
3 treatment facility that allows a dependent child to reside with his
4 or her parent shall not be, for that reason alone, prima facie
5 evidence of substantial danger. The court shall specify the factual
6 basis for its conclusion that the return of the child to the custody
7 of his or her parent would pose a substantial danger or would not
8 pose a substantial danger to the physical health, safety, protection,
9 or physical or emotional well-being of the child.

10 (e) If a court orders a child detained, the court shall state the
11 facts on which the decision is based, specify why the initial removal
12 was necessary, reference the social worker's report or other
13 evidence relied upon to make its determination whether
14 continuance in the home of the parent or legal guardian is contrary
15 to the child's welfare, order temporary placement and care of the
16 child to be vested with the county child welfare department pending
17 the hearing held pursuant to Section 355 or further order of the
18 court, and order services to be provided as soon as possible to
19 reunify the child and his or her family if appropriate.

20 (f) (1) If the child is not released from custody, the court may
21 order that the child shall be placed in the assessed home of a
22 relative, in an emergency shelter or other suitable licensed place,
23 in a place exempt from licensure designated by the juvenile court,
24 or in the assessed home of a nonrelative extended family member
25 as defined in Section 362.7 for a period not to exceed 15 judicial
26 days. A runaway and homeless youth shelter licensed by the State
27 Department of Social Services pursuant to Section 1502.35 of the
28 Health and Safety Code shall not be a placement option pursuant
29 to this section.

30 (2) As used in this section, "relative" means an adult who is
31 related to the child by blood, adoption, or affinity within the fifth
32 degree of kinship, including stepparents, stepsiblings, and all
33 relatives whose status is preceded by the words "great,"
34 "great-great," or "grand," or the spouse of any of these persons,
35 even if the marriage was terminated by death or dissolution.
36 However, only the following relatives shall be given preferential
37 consideration for placement of the child: an adult who is a
38 grandparent, aunt, uncle, or sibling of the child.

39 (3) The court shall consider the recommendations of the social
40 worker based on the assessment pursuant to paragraph (1) of

subdivision (d) of Section 309 of the relative's home, including the results of a criminal records check and prior child abuse allegations, if any, prior to ordering that the child be placed with a relative. The court shall order the parent to disclose to the social worker the names, residences, and any known identifying information of any maternal or paternal relatives of the child. The social worker shall initiate the assessment pursuant to Section 361.3 of any relative to be considered for continuing placement.

(4) If the child is not placed with a relative at the time of the initial hearing and an able and willing relative is available and requests temporary placement of the child, the court shall order the social worker to immediately conduct an assessment pursuant to paragraph (1) of subdivision (d) of Section 309.

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

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

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

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

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

1 (3) If the court cannot identify a responsible adult to make
2 educational decisions for the child and the appointment of a
3 surrogate parent, as defined in subdivision (a) of Section 56050
4 of the Education Code, is not warranted, the court may, with the
5 input of any interested person, make educational decisions for the
6 child. If the child is receiving services from a regional center, the
7 provision of any developmental services related to the court's
8 decision shall be consistent with the child's individual program
9 plan and pursuant to the provisions of the Lanterman
10 Developmental Disabilities Services Act (Division 4.5
11 (commencing with Section 4500)). If the court cannot identify a
12 responsible adult to make developmental services decisions for
13 the child, the court may, with the input of any interested person,
14 make developmental services decisions for the child. If the court
15 makes educational or developmental services decisions for the
16 child, the court shall also issue appropriate orders to ensure that
17 every effort is made to identify a responsible adult to make future
18 educational or developmental services decisions for the child.

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

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

35 (6) If the court appoints a developmental services decisionmaker
36 pursuant to this section, he or she shall have the authority to access
37 the child's information and records pursuant to subdivision (u) of
38 Section 4514 and subdivision (y) of Section 5328, and to act on
39 the child's behalf for the purposes of the individual program plan
40 process pursuant to Sections 4646, 4646.5, and 4648 and the fair

1 hearing process pursuant to Chapter 7 (commencing with Section
2 4700) of Division 4.5, and as set forth in the court order.

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

5 361.4. (a) Prior to placing a child in the home of a relative, or
6 the home of any prospective guardian or other person who is not
7 a licensed or certified foster parent, the county social worker shall
8 visit the home to ascertain the appropriateness of the placement.

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

37 (2) An identification card from a foreign consulate or foreign
38 passport shall be considered a valid form of identification for
39 conducting a criminal records check and fingerprint clearance
40 check under this subdivision and under subdivision (c).

1 (c) Whenever a child may be placed in the home of a relative,
2 or a prospective guardian or other person who is not a licensed or
3 certified foster parent, the county social worker shall cause a check
4 of the Child Abuse Central Index pursuant to subdivision (a) of
5 Section 11170 of the Penal Code to be requested from the
6 Department of Justice. The Child Abuse Central Index check shall
7 be conducted on all persons over 18 years of age living in the
8 home. For any application received on or after January 1, 2008, if
9 any person in the household is 18 years of age or older and has
10 lived in another state in the preceding five years, the county social
11 worker shall check the other state's child abuse and neglect registry
12 to the extent required by federal law.

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

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

31 (3) (A) A county may issue a criminal records exemption only
32 if that county has been granted permission by the Director of Social
33 Services to issue criminal records exemptions. The county may
34 file a request with the Director of Social Services seeking
35 permission for the county to establish a procedure to evaluate and
36 grant appropriate individual criminal records exemptions for
37 persons described in subdivision (b). The director shall grant or
38 deny the county's request within 14 days of receipt. The county
39 shall evaluate individual criminal records in accordance with the
40 standards and limitations set forth in paragraph (1) of subdivision

(g) of Section 1522 of the Health and Safety Code, and shall 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, assist the person to locate and obtain any documents required for the criminal records exemption, which may include having a social worker contact any other government entity directly to obtain any required arrest reports or court dispositions.

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

(C) If a court orders the county to assess a person described in subdivision (a), the county shall complete the assessment process, ~~including any exemptions and waivers, process described in this section and subdivision (a) of Section 361.3,~~ within 30 calendar days. If the ~~process~~ assessment is not complete within 30 calendar days of the court order, the court may set an order to show cause hearing. If the ~~assessment process is not complete, is not complete within 60 calendar days, or an exemption or waiver is denied, or any administrative process is not complete within 60 calendar days of the court ordering the county to conduct the assessment,~~ the court may conduct a hearing to determine if the county has abused its discretion.

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

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

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

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

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

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