

AMENDED IN ASSEMBLY AUGUST 4, 2016

AMENDED IN ASSEMBLY JUNE 30, 2016

AMENDED IN SENATE APRIL 14, 2016

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1336

Introduced by Senator Jackson

February 19, 2016

An act to amend Sections 358 and 361.3 of the Welfare and Institutions Code, relating to dependent children.

LEGISLATIVE COUNSEL'S DIGEST

SB 1336, as amended, Jackson. Dependent children: placement with relatives.

Existing law requires a county social worker to investigate the circumstances of each child taken into temporary custody by a peace officer who has reasonable cause to believe the child is the victim of abuse or neglect. Existing law requires the social worker to conduct an investigation to identify and locate adult relatives of the child and to provide him or her with a specified relative information form. Existing law further requires the social worker to initiate an assessment of the suitability of a relative who requests that the child be placed with him or her.

Under existing law, the juvenile court is required to hold a hearing to determine the proper disposition to be made of a child adjudged a dependent of the juvenile court. Existing law requires the court to consider the social study of the child made by the social worker before the court arrives at its judgment. Existing law requires that, subsequent to the hearing, consideration for placement again be given to relatives

whenever a new placement of the child must be made. Existing case law generally provides that the relative placement preference applies throughout the reunification period, and that a social worker is required to make an assessment of a relative who requests to be considered for placement at any time during that period.

This bill would require the juvenile court to make a finding as to whether the social worker exercised due diligence in conducting his or her investigation to identify, locate, and notify the child's relatives. The bill would codify procedures that apply under existing law, as interpreted by case law, whenever a relative identifies himself or herself to the county during the reunification period for purposes of placement with that relative and the making of the assessment by the county, as specified.

This bill would incorporate changes to Section 361.3 of the Welfare and Institutions Code proposed by both this bill and AB 1997, which would become operative only if both bills are enacted and become effective on or before January 1, 2017, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. It is the intent of the Legislature in amending~~
2 ~~Section 361.3 of the Welfare and Institutions Code to clarify, if a~~
3 ~~child is receiving reunification services and a relative identifies~~
4 ~~himself or herself to a county child welfare agency, that the relative~~
5 ~~be evaluated by the county child welfare agency and a~~
6 ~~recommendation be made to the court as to whether the relative~~
7 ~~should or should not be considered for placement.~~

8 ~~SEC. 2.~~

9 ~~SECTION 1.~~ Section 358 of the Welfare and Institutions Code
10 is amended to read:

11 358. (a) After finding that a child is a person described in
12 Section 300, the court shall hear evidence on the question of the
13 proper disposition to be made of the child. Prior to making a
14 finding required by this section, the court may continue the hearing
15 on its own motion, the motion of the parent or guardian, or the
16 motion of the child, as follows:

17 (1) If the child is detained during the continuance, and the social
18 worker is not alleging that subdivision (b) of Section 361.5 is

1 applicable, the continuance shall not exceed 10 judicial days. The
2 court may make an order for detention of the child or for the child's
3 release from detention, during the period of continuance, as is
4 appropriate.

5 (2) If the child is not detained during the continuance, the
6 continuance shall not exceed 30 days after the date of the finding
7 pursuant to Section 356. However, the court may, for cause,
8 continue the hearing for an additional 15 days.

9 (3) If the social worker is alleging that subdivision (b) of Section
10 361.5 is applicable, the court shall continue the proceedings for a
11 period not to exceed 30 days. The social worker shall notify each
12 parent of the content of subdivision (b) of Section 361.5 and shall
13 inform each parent that if the court does not order reunification a
14 permanency planning hearing will be held, and that his or her
15 parental rights may be terminated within the timeframes specified
16 by law.

17 (b) (1) Before determining the appropriate disposition, the court
18 shall receive in evidence the social study of the child made by the
19 social worker, any study or evaluation made by a child advocate
20 appointed by the court, and other relevant and material evidence
21 as may be offered, including, but not limited to, the willingness
22 of the caregiver to provide legal permanency for the child if
23 reunification is unsuccessful. In any judgment and order of
24 disposition, the court shall specifically state that the social study
25 made by the social worker and the study or evaluation made by
26 the child advocate appointed by the court, if there be any, has been
27 read and considered by the court in arriving at its judgment and
28 order of disposition. Any social study or report submitted to the
29 court by the social worker shall include the individual child's case
30 plan developed pursuant to Section 16501.1.

31 (2) Whenever a child is removed from a parent's or guardian's
32 custody, the court shall make a finding as to whether the social
33 worker has exercised due diligence in conducting the investigation,
34 as required pursuant to paragraph (1) of subdivision (e) of Section
35 309, to identify, locate, and notify the child's relatives, including
36 both maternal and paternal relatives.

37 (3) When making the determination required pursuant to
38 paragraph (2), the court may consider, among other examples of
39 due diligence, the extent to which the social worker has complied

1 with paragraph (1) of subdivision (e) of Section 309, and has done
 2 any of the following:

3 (A) Asked the child, in an age-appropriate manner and consistent
 4 with the child’s best interest, about his or her relatives.

5 (B) Obtained information regarding the location of the child’s
 6 relatives.

7 (C) Reviewed the child’s case file for any information regarding
 8 the child’s relatives.

9 (D) Telephoned, emailed, or visited all identified relatives.

10 (E) Asked located relatives for the names and locations of other
 11 relatives.

12 (F) Used Internet search tools to locate relatives identified as
 13 supports.

14 (c) If the court finds that a child is described by subdivision (h)
 15 of Section 300 or that subdivision (b) of Section 361.5 may be
 16 applicable, the court shall conduct the dispositional proceeding
 17 pursuant to subdivision (c) of Section 361.5.

18 ~~SEC. 3.~~

19 *SEC. 2.* Section 361.3 of the Welfare and Institutions Code is
 20 amended to read:

21 361.3. (a) In any case in which a child is removed from the
 22 physical custody of his or her parents pursuant to Section 361,
 23 preferential consideration shall be given to a request by a relative
 24 of the child for placement of the child with the relative, regardless
 25 of the relative’s immigration status. In determining whether
 26 placement with a relative is appropriate, the county social worker
 27 and court shall consider, but shall not be limited to, consideration
 28 of all the following factors:

29 (1) The best interest of the child, including special physical,
 30 psychological, educational, medical, or emotional needs.

31 (2) The wishes of the parent, the relative, and child, if
 32 appropriate.

33 (3) The provisions of Part 6 (commencing with Section 7950)
 34 of Division 12 of the Family Code regarding relative placement.

35 (4) Placement of siblings and half siblings in the same home,
 36 unless that placement is found to be contrary to the safety and
 37 well-being of any of the siblings, as provided in Section 16002.

38 (5) The good moral character of the relative and any other adult
 39 living in the home, including whether any individual residing in

1 the home has a prior history of violent criminal acts or has been
2 responsible for acts of child abuse or neglect.

3 (6) The nature and duration of the relationship between the child
4 and the relative, and the relative's desire to care for, and to provide
5 legal permanency for, the child if reunification is unsuccessful.

6 (7) The ability of the relative to do the following:

7 (A) Provide a safe, secure, and stable environment for the child.

8 (B) Exercise proper and effective care and control of the child.

9 (C) Provide a home and the necessities of life for the child.

10 (D) Protect the child from his or her parents.

11 (E) Facilitate court-ordered reunification efforts with the parents.

12 (F) Facilitate visitation with the child's other relatives.

13 (G) Facilitate implementation of all elements of the case plan.

14 (H) Provide legal permanence for the child if reunification fails.

15 However, any finding made with respect to the factor considered
16 pursuant to this subparagraph and pursuant to subparagraph (G)
17 shall not be the sole basis for precluding preferential placement
18 with a relative.

19 (I) Arrange for appropriate and safe child care, as necessary.

20 (8) The safety of the relative's home. For a relative to be
21 considered appropriate to receive placement of a child under this
22 section, the relative's home shall first be approved pursuant to the
23 process and standards described in subdivision (d) of Section 309.

24 In this regard, the Legislature declares that a physical disability,
25 such as blindness or deafness, is no bar to the raising of children,
26 and a county social worker's determination as to the ability of a
27 disabled relative to exercise care and control should center upon
28 whether the relative's disability prevents him or her from exercising
29 care and control. The court shall order the parent to disclose to the
30 county social worker the names, residences, and any other known
31 identifying information of any maternal or paternal relatives of
32 the child. This inquiry shall not be construed, however, to guarantee
33 that the child will be placed with any person so identified. The
34 county social worker shall initially contact the relatives given
35 preferential consideration for placement to determine if they desire
36 the child to be placed with them. Those desiring placement shall
37 be assessed according to the factors enumerated in this subdivision.
38 The county social worker shall document these efforts in the social
39 study prepared pursuant to Section 358.1. The court shall authorize
40 the county social worker, while assessing these relatives for the

1 possibility of placement, to disclose to the relative, as appropriate,
2 the fact that the child is in custody, the alleged reasons for the
3 custody, and the projected likely date for the child's return home
4 or placement for adoption or legal guardianship. However, this
5 investigation shall not be construed as good cause for continuance
6 of the dispositional hearing conducted pursuant to Section 358.

7 (b) In any case in which more than one appropriate relative
8 requests preferential consideration pursuant to this section, each
9 relative shall be considered under the factors enumerated in
10 subdivision (a). Consistent with the legislative intent for children
11 to be placed immediately with a responsible relative, this section
12 does not limit the county social worker's ability to place a child
13 in the home of an appropriate relative or a nonrelative extended
14 family member pending the consideration of other relatives who
15 have requested preferential consideration.

16 (c) For purposes of this section:

17 (1) "Preferential consideration" means that the relative seeking
18 placement shall be the first placement to be considered and
19 investigated.

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

28 (d) (1) Subsequent to the hearing conducted pursuant to Section
29 358, whenever a new placement of the child must be made,
30 consideration for placement shall again be given as described in
31 this section to relatives who have not been found to be unsuitable
32 and who will fulfill the child's reunification or permanent plan
33 requirements. In addition to the factors described in subdivision
34 (a), the county social worker shall consider whether the relative
35 has established and maintained a relationship with the child.

36 ~~(2) (A) Whenever a relative identifies himself or herself to the~~
37 ~~county subsequent to the hearing conducted pursuant to Section~~
38 ~~358 and during the provision of reunification services, and the~~
39 ~~county is not otherwise considering a change of placement, the~~
40 ~~county shall, within 14 calendar days, determine whether the~~

1 ~~relative may meet the best interests of the child and should~~
2 ~~therefore be assessed and considered for placement according to~~
3 ~~the factors described in subdivision (a).~~

4 ~~(B) Within three days of determining whether to assess and~~
5 ~~consider the relative for placement, the county shall inform the~~
6 ~~court, the relative, and the parties to the case of its decision,~~
7 ~~including the reasons for the decision.~~

8 ~~(C) If the county does not assess the relative for placement, at~~
9 ~~the request of a party to the case or on its own motion, the court~~
10 ~~shall set the matter for hearing and may order the agency to assess~~
11 ~~the relative and recommend to the court whether the child should~~
12 ~~be placed with the relative.~~

13 ~~(D) Notwithstanding Section 388, a relative may request a~~
14 ~~hearing before the court if the county decided not to assess the~~
15 ~~relative for placement. The court may set the matter for hearing~~
16 ~~and may order the agency to assess the relative and recommend~~
17 ~~to the court whether the child should be placed with the relative.~~
18 ~~If the court does not set the matter for hearing, the court shall state~~
19 ~~its reasons on the record.~~

20 *(2) (A) Whenever a relative identifies himself or herself to the*
21 *county subsequent to the hearing conducted pursuant to Section*
22 *358 and during the provision of reunification services, and the*
23 *county is not otherwise considering a change of placement, the*
24 *county shall, within 14 calendar days, determine whether it is in*
25 *the best interest of the child to assess and consider the relative for*
26 *placement and shall inform the court, the relative, and all parties*
27 *to the case of its decision, including the reasons for its decision.*
28 *In its determination of whether it is in the best interest of the child*
29 *to assess the relative, the county shall take into account all known*
30 *relevant factors of the case. This initial determination shall not*
31 *require an assessment of the relative.*

32 *(B) If the county does not assess the relative for placement, at*
33 *the request of the child, the court shall set the matter for hearing*
34 *and may order the agency to assess the relative for placement*
35 *according to the factors described in subdivision (a) and*
36 *recommend to the court whether the child should be placed with*
37 *the relative. If the court does not order the county to assess the*
38 *relative, it shall state the reasons for the decision in writing or on*
39 *the record.*

1 (C) If the county does not assess the relative for placement, at
2 the request of a party to the case or on its own motion, the court
3 may set the matter for hearing and may order the agency to assess
4 the relative according to the factors described in subdivision (a)
5 and recommend to the court whether the child should be placed
6 with the relative. If the court does not order the county to assess
7 the relative, it shall state the reasons for the decision in writing
8 or on the record.

9 (D) Pursuant to Section 388, a relative may request the court
10 to order the county to assess the relative for placement of the child.
11 The court may set the matter for hearing and may order the agency
12 to assess the relative for placement according to the factors
13 described in subdivision (a) and recommend to the court whether
14 the child should be placed with the relative. If the court does not
15 set the matter for hearing, the court shall state its reasons for the
16 denial in writing or on the record.

17 (e) If the court does not place the child with a relative who has
18 been considered for placement pursuant to this section, the court
19 shall state for the record the reasons placement with that relative
20 was denied.

21 (f) (1) With respect to a child who satisfies the criteria set forth
22 in paragraph (2), the department and any licensed adoption agency
23 may search for a relative and furnish identifying information
24 relating to the child to that relative if it is believed the child's
25 welfare will be promoted thereby.

26 (2) Paragraph (1) shall apply if both of the following conditions
27 are satisfied:

28 (A) The child was previously a dependent of the court.

29 (B) The child was previously adopted and the adoption has been
30 disrupted, set aside pursuant to Section 9100 or 9102 of the Family
31 Code, or the child has been released into the custody of the
32 department or a licensed adoption agency by the adoptive parent
33 or parents.

34 (3) As used in this subdivision, "relative" includes a member
35 of the child's birth family and nonrelated extended family
36 members, regardless of whether the parental rights were terminated,
37 provided that both of the following are true:

38 (A) No appropriate potential caretaker is known to exist from
39 the child's adoptive family, including nonrelated extended family
40 members of the adoptive family.

1 (B) The child was not the subject of a voluntary relinquishment
2 by the birth parents pursuant to Section 8700 of the Family Code
3 or Section 1255.7 of the Health and Safety Code.

4 *SEC. 2.5. Section 361.3 of the Welfare and Institutions Code*
5 *is amended to read:*

6 361.3. (a) In any case in which a child is removed from the
7 physical custody of his or her parents pursuant to Section 361,
8 preferential consideration shall be given to a request by a relative
9 of the child for placement of the child with the relative, regardless
10 of the relative's immigration status. In determining whether
11 placement with a relative is appropriate, the county social worker
12 and court shall consider, but shall not be limited to, consideration
13 of all the following factors:

14 (1) The best interest of the child, including special physical,
15 psychological, educational, medical, or emotional needs.

16 (2) The wishes of the parent, the relative, and child, if
17 appropriate.

18 (3) The provisions of Part 6 (commencing with Section 7950)
19 of Division 12 of the Family Code regarding relative placement.

20 (4) Placement of siblings and half siblings in the same home,
21 unless that placement is found to be contrary to the safety and
22 well-being of any of the siblings, as provided in Section 16002.

23 (5) The good moral character of the relative and any other adult
24 living in the home, including whether any individual residing in
25 the home has a prior history of violent criminal acts or has been
26 responsible for acts of child abuse or neglect.

27 (6) The nature and duration of the relationship between the child
28 and the relative, and the relative's desire to care for, and to provide
29 legal permanency for, the child if reunification is unsuccessful.

30 (7) The ability of the relative to do the following:

31 (A) Provide a safe, secure, and stable environment for the child.

32 (B) Exercise proper and effective care and control of the child.

33 (C) Provide a home and the necessities of life for the child.

34 (D) Protect the child from his or her parents.

35 (E) Facilitate court-ordered reunification efforts with the parents.

36 (F) Facilitate visitation with the child's other relatives.

37 (G) Facilitate implementation of all elements of the case plan.

38 (H) (i) Provide legal permanence for the child if reunification
39 fails.

40 ~~However,~~

1 (ii) *However*, any finding made with respect to the factor
2 considered pursuant to this subparagraph and pursuant to
3 subparagraph (G) shall not be the sole basis for precluding
4 preferential placement with a relative.

5 (I) Arrange for appropriate and safe child care, as necessary.

6 (8) (A) The safety of the relative's home. For a relative to be
7 considered appropriate to receive placement of a child under this
8 ~~section~~, *section on an emergency basis*, the relative's home shall
9 first be ~~approved~~ *assessed* pursuant to the process and standards
10 described in subdivision (d) of Section 309.

11 ~~In~~

12 (B) *In* this regard, the Legislature declares that a physical
13 disability, such as blindness or deafness, is no bar to the raising
14 of children, and a county social worker's determination as to the
15 ability of a disabled relative to exercise care and control should
16 center upon whether the relative's disability prevents him or her
17 from exercising care and control. The court shall order the parent
18 to disclose to the county social worker the names, residences, and
19 any other known identifying information of any maternal or
20 paternal relatives of the child. This inquiry shall not be construed,
21 however, to guarantee that the child will be placed with any person
22 so identified. The county social worker shall initially contact the
23 relatives given preferential consideration for placement to
24 determine if they desire the child to be placed with them. Those
25 desiring placement shall be assessed according to the factors
26 enumerated in this subdivision. The county social worker shall
27 document these efforts in the social study prepared pursuant to
28 Section 358.1. The court shall authorize the county social worker,
29 while assessing these relatives for the possibility of placement, to
30 disclose to the relative, as appropriate, the fact that the child is in
31 custody, the alleged reasons for the custody, and the projected
32 likely date for the child's return home or placement for adoption
33 or legal guardianship. However, this investigation shall not be
34 construed as good cause for continuance of the dispositional
35 hearing conducted pursuant to Section 358.

36 (b) In any case in which more than one appropriate relative
37 requests preferential consideration pursuant to this section, each
38 relative shall be considered under the factors enumerated in
39 subdivision (a). Consistent with the legislative intent for children
40 to be placed immediately with a responsible relative, this section

1 does not limit the county social worker’s ability to place a child
2 in the home of an appropriate relative or a nonrelative extended
3 family member pending the consideration of other relatives who
4 have requested preferential consideration.

5 (c) For purposes of this section:

6 (1) “Preferential consideration” means that the relative seeking
7 placement shall be the first placement to be considered and
8 investigated.

9 (2) “Relative” means an adult who is related to the child by
10 blood, adoption, or affinity within the fifth degree of kinship,
11 including stepparents, stepsiblings, and all relatives whose status
12 is preceded by the words “great,” “great-great,” or “grand,” or the
13 spouse of any of these persons even if the marriage was terminated
14 by death or dissolution. However, only the following relatives
15 shall be given preferential consideration for the placement of the
16 child: an adult who is a grandparent, aunt, uncle, or sibling.

17 (d) (1) Subsequent to the hearing conducted pursuant to Section
18 358, whenever a new placement of the child must be made,
19 consideration for placement shall again be given as described in
20 this section to relatives who have not been found to be unsuitable
21 and who will fulfill the child’s reunification or permanent plan
22 requirements. In addition to the factors described in subdivision
23 (a), the county social worker shall consider whether the relative
24 has established and maintained a relationship with the child.

25 (2) (A) *Whenever a relative identifies himself or herself to the*
26 *county subsequent to the hearing conducted pursuant to Section*
27 *358 and during the provision of reunification services, and the*
28 *county is not otherwise considering a change of placement, the*
29 *county shall, within 14 calendar days, determine whether it is in*
30 *the best interest of the child to assess and consider the relative for*
31 *placement and shall inform the court, the relative, and all parties*
32 *to the case of its decision, including the reasons for its decision.*
33 *In its determination of whether it is in the best interest of the child*
34 *to assess the relative, the county shall take into account all known*
35 *relevant factors of the case. This initial determination shall not*
36 *require an assessment of the relative.*

37 (B) *If the county does not assess the relative for placement, at*
38 *the request of the child, the court shall set the matter for hearing*
39 *and may order the agency to assess the relative for placement*
40 *according to the factors described in subdivision (a) and*

1 *recommend to the court whether the child should be placed with*
2 *the relative. If the court does not order the county to assess the*
3 *relative, it shall state the reasons for the decision in writing or on*
4 *the record.*

5 (C) *If the county does not assess the relative for placement, at*
6 *the request of a party to the case or on its own motion, the court*
7 *may set the matter for hearing and may order the agency to assess*
8 *the relative according to the factors described in subdivision (a)*
9 *and recommend to the court whether the child should be placed*
10 *with the relative. If the court does not order the county to assess*
11 *the relative, it shall state the reasons for the decision in writing*
12 *or on the record.*

13 (D) *Pursuant to Section 388, a relative may request the court*
14 *to order the county to assess the relative for placement of the child.*
15 *The court may set the matter for hearing and may order the agency*
16 *to assess the relative for placement according to the factors*
17 *described in subdivision (a) and recommend to the court whether*
18 *the child should be placed with the relative. If the court does not*
19 *set the matter for hearing, the court shall state its reasons for the*
20 *denial in writing or on the record.*

21 (e) *If the court does not place the child with a relative who has*
22 *been considered for placement pursuant to this section, the court*
23 *shall state for the record the reasons placement with that relative*
24 *was denied.*

25 (f) (1) *With respect to a child who satisfies the criteria set forth*
26 *in paragraph (2), the department and any licensed adoption agency*
27 *may search for a relative and furnish identifying information*
28 *relating to the child to that relative if it is believed the child's*
29 *welfare will be promoted thereby.*

30 (2) *Paragraph (1) shall apply if both of the following conditions*
31 *are satisfied:*

32 (A) *The child was previously a dependent of the court.*

33 (B) *The child was previously adopted and the adoption has been*
34 *disrupted, set aside pursuant to Section 9100 or 9102 of the Family*
35 *Code, or the child has been released into the custody of the*
36 *department or a licensed adoption agency by the adoptive parent*
37 *or parents.*

38 (3) *As used in this subdivision, "relative" includes a member*
39 *of the child's birth family and nonrelated extended family*

1 members, regardless of whether the parental rights were terminated,
2 provided that both of the following are true:

3 (A) No appropriate potential caretaker is known to exist from
4 the child's adoptive family, including nonrelated extended family
5 members of the adoptive family.

6 (B) The child was not the subject of a voluntary relinquishment
7 by the birth parents pursuant to Section 8700 of the Family Code
8 or Section 1255.7 of the Health and Safety Code.

9 *SEC. 3. Section 2.5 of this bill incorporates amendments to*
10 *Section 361.3 of the Welfare and Institutions Code proposed by*
11 *both this bill and Assembly Bill 1997. It shall only become*
12 *operative if (1) both bills are enacted and become effective on or*
13 *before January 1, 2017, (2) each bill amends Section 361.3 of the*
14 *Welfare and Institutions Code, and (3) this bill is enacted after*
15 *Assembly Bill 1997, in which case Section 2 of this bill shall not*
16 *become operative.*