

Senate Bill No. 86

CHAPTER 36

An act to amend Section 355 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor May 3, 1996. Filed with
Secretary of State May 6, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 86, Haynes. Dependent minors: jurisdictional hearing.

Existing law provides that the juvenile court shall, at the jurisdictional hearing, first consider only the question of whether the minor is a dependent child of the court, and permits the admission of any matter or information relevant and material to the circumstances or acts that are alleged to bring the child within the jurisdiction of the juvenile court. However, it also provides that proof by a preponderance of evidence legally admissible in a civil case must be introduced to support such a finding. Existing law also provides that the juvenile court may receive and consider the reports and recommendations of the probation officer in dependency hearings. These provisions have been interpreted by the California Supreme Court in the case of *In re Malinda S.*, 51 Cal. 3d 368, to allow the admission of these reports and recommendations in determining the jurisdiction of the court in these matters even though they include otherwise inadmissible hearsay.

This bill would specify that a social study prepared by the petitioning agency may be admitted into evidence at the jurisdictional hearing, and constitutes competent evidence upon which a finding of jurisdiction may be based, as specified. It would require the preparer of the report to be available for examination on its contents. It would also provide that hearsay evidence contained in the report shall not be sufficient in itself to support a jurisdictional finding unless it would be admissible over objection in a civil or criminal action, the hearsay declarants are made available for cross-examination, the hearsay declarant is a child under the age of 12 years and is the subject of the hearing, or the declarant is a peace officer, health care professional, social worker, or teacher, as specified.

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

SECTION 1. Section 355 of the Welfare and Institutions Code is amended to read:

355. (a) At the jurisdictional hearing, the court shall first consider only the question whether the minor is a person described by Section 300. Any legally admissible evidence that is relevant to the circumstances or acts that are alleged to bring the minor within the jurisdiction of the juvenile court is admissible and may be received in evidence. Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300.

(b) A social study prepared by the petitioning agency, and hearsay evidence contained in it, is admissible and constitutes competent evidence upon which a finding of jurisdiction pursuant to Section 300 may be based, to the extent allowed by subdivisions (c) and (d).

(1) For the purposes of this section, “social study” means any written report furnished to the juvenile court and to all parties or their counsel by the county probation or welfare department in any matter involving the custody, status, or welfare of a minor in a dependency proceeding pursuant to Article 6 (commencing with Section 300) to 12 (commencing with Section 385), inclusive of Chapter 2 of Division 2.

(2) The preparer of the social study shall be made available for cross-examination upon a timely request by any party. The court may deem the preparer available for cross-examination if it determines that the preparer is on telephone standby and can be present in court within a reasonable time of the request.

(3) The court may grant a reasonable continuance not to exceed 10 days upon request by any party if the social study is not provided to the parties or their counsel within a reasonable time before the hearing.

(c) (1) If any party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study, the specific hearsay evidence shall not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based, unless the petitioner establishes one or more of the following exceptions:

(A) The hearsay evidence would be admissible in any civil or criminal proceeding under any statutory or decisional exception to the prohibition against hearsay.

(B) The hearsay declarant is a minor under the age of 12 years who is the subject of the jurisdictional hearing. However, the hearsay statement of a minor under the age of 12 years shall not be admissible if the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence.

(C) The hearsay declarant is a peace officer as defined by Chapter 4.5 (commencing with Section 830) of Part 2 of Title 3 of the Penal Code, a health practitioner as defined by Section 11165.8 of the Penal Code, a social worker licensed pursuant to Chapter 14 (commencing with Section 4996) of Division 2 of the Business and Professions Code,



or a teacher who holds a credential pursuant to Chapter 2 (commencing with Section 44200) of Part 24 of Division 3 of Title 2 of the Education Code. For the purpose of this subdivision, evidence in a declaration is admissible only to the extent that it would otherwise be admissible under this section or if the declarant were present and testifying in court.

(D) The hearsay declarant is available for cross-examination. For purposes of this section, the court may deem a witness available for cross-examination if it determines that the witness is on telephone standby and can be present in court within a reasonable time of a request to examine the witness.

(2) For purposes of this subdivision, an objection is timely if it identifies with reasonable specificity the disputed hearsay evidence and it gives the petitioner a reasonable period of time to meet the objection prior to a contested hearing.

(d) This section shall not be construed to limit the right of any party to the jurisdictional hearing to subpoena a witness whose statement is contained in the social study or to introduce admissible evidence relevant to the weight of the hearsay evidence or the credibility of the hearsay declarant.

