

Senate Bill No. 645

CHAPTER 949

An act to amend Section 361.3 of, and to add Sections 324.5 and 361.4 to, the Welfare and Institutions Code, relating to children.

[Approved by Governor September 28, 1998. Filed
with Secretary of State September 29, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 645, Polanco. Child abuse.

(1) Existing law sets forth specified conditions of abuse and neglect pursuant to which a child may be declared a dependent child of the juvenile court.

This bill would provide that whenever allegations of physical or sexual abuse of a child come to the attention of the local law enforcement agency or local child welfare department, and the child is taken into protective custody, the department or agency may, as soon as practically possible, consult with a specified medical practitioner and, if deemed appropriate, shall cause the minor to undergo a physical examination by a licensed medical practitioner, as provided. The bill would require the agency or department, whenever possible, to ensure that the examination takes place within 72 hours of the time the child was taken into protective custody or, where the allegations are made while the child is in custody, within 72 hours of the time the allegations are made.

This bill also would require that whenever a dependent child may 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 county social worker placing the child shall cause a criminal record check to be conducted by an appropriate governmental agency, with respect to any person over the age of 18 years living in the home and on any other person over the age of 18 years known to the placing entity who may have significant contact with the child, as specified. The bill would provide that a criminal record check may also be conducted on any person over the age of 14 years living in the home who the county social worker believes may have a criminal record. The bill would require the social worker to visit the home to ascertain the appropriateness of the placement prior to placing a child in the home of a relative of the child, or the home of any prospective guardian or other person who is not a licensed or certified foster parent, and would require the county social worker to cause a check of the Child Abuse Index to be requested from the Department of Justice, as specified.

The bill would also require the county social worker to cause a fingerprint clearance check to be conducted through the Department of Justice, and would prohibit the placement of a child in a home on the basis of the information received pursuant to that check under certain conditions.

Because this bill would require increased duties of local officials, the bill would impose a state-mandated local program.

The bill would also require the State Department of Social Services to report specified information to the Legislature by January 1, 2002, regarding the placement of foster children with relatives.

(2) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. This act shall be known as the Lance Helms Child Safety Act of 1998.

SEC. 2. Section 324.5 is added to the Welfare and Institutions Code, to read:

324.5. (a) Whenever allegations of physical or sexual abuse of a child come to the attention of a local law enforcement agency or the local child welfare department and the child is taken into protective custody, the local law enforcement agency, or child welfare department may, as soon as practically possible, consult with a medical practitioner, who has specialized training in detecting and treating child abuse injuries and neglect, to determine whether a physical examination of the child is appropriate. If deemed appropriate, the local law enforcement agency, or the child welfare department, shall cause the child to undergo a physical examination performed by a medical practitioner who has specialized training in detecting and treating child abuse injuries and neglect, and, whenever possible, shall ensure that this examination take place within 72 hours of the time the child was taken into protective custody. In the event the allegations are made while the child is in custody, the physical examination shall be performed within 72 hours of the time the allegations were made.

In the case of a petition filed pursuant to Section 319, the department shall provide the results of the physical examination to



the court and to any counsel for the minor, and counsel for the parent or guardian of the minor. Failure to obtain this physical examination shall not be grounds to deny a petition under this section.

(b) The local child welfare agency shall, whenever possible, request that additional medical examinations to determine child abuse injuries or neglect, be performed by the same medical practitioner who performed the examinations described in subdivision (a). If it is not possible to obtain additional medical examinations, the local child welfare agency shall ensure that future medical practitioners to whom the child has been referred for ongoing diagnosis and treatment have specialized training in detecting and treating child abuse injuries and neglect and have access to the child's medical records covering the current and previous incidents of child abuse.

SEC. 3. Section 361.3 of the Welfare and Institutions Code is amended to read:

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

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

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

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

(4) Placement of siblings and half-siblings in the same home, if such a placement is found to be in the best interests of each of the children as provided in Section 16002.

(5) The good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect as provided for in Section 361.4.

(6) The nature and duration of the relationship between the child and the relative, and the relative's desire to care for the child.

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

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

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

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

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

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

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



- (G) Facilitate implementation of all elements of the case plan.
- (H) Provide legal permanence for the child if reunification fails.

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

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

(8) The safety of the relative's home. For purposes of this paragraph, the county social worker shall conduct a direct assessment of the safety of the relative's home. The information obtained as a result of this assessment shall be documented by the county social worker in the child's case record.

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

(b) In any case in which more than one appropriate relative requests preferential consideration pursuant to this section, each relative shall be considered under the factors enumerated in subdivision (a).

- (c) For purposes of this section:

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

(2) "Relative" means an adult who is related to the child or the child's half sibling by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great" or "grand" or the spouse of any such person even if the marriage has



been terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for the placement of the child: an adult who is a grandparent, aunt, uncle, or sibling.

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

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

SEC. 4. Section 361.4 is added to the Welfare and Institutions Code, to read:

361.4. (a) Prior to placing a child 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 county social worker shall visit the home to ascertain the appropriateness of the placement.

(b) Whenever a child may 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 county social worker placing the child shall cause a criminal record check to be conducted by an appropriate governmental agency through the California Law Enforcement Telecommunications System pursuant to Section 1522.06 of the Health and Safety Code. The criminal record check shall be conducted with regard to all persons over the age of 18 years living in the home, and on any other person over the age of 18 years, other than professionals providing professional services to the child, known to the placing entity who may have significant contact with the child, including any person who has a familial or intimate relationship with any person living in the home. A criminal record check may be conducted pursuant to this section on any person over the age of 14 years living in the home who the county social worker believes may have a criminal record.

(c) Whenever a child may be placed in the home of a relative, or a prospective guardian or other person who is not a licensed or certified foster parent, the county social worker shall cause a check of the Child Abuse Index pursuant to subdivision (a) of Section 11170 of the Penal Code to be requested from the Department of Justice. The Child Abuse Index check shall be conducted on all persons over the age of 18 years living in the home.

(d) If either the criminal records check or Child Abuse Index checks conducted pursuant to subdivisions (b) and (c) indicate that



the person on whom the check was conducted may have a criminal record or may be a known or suspected child abuser, and the county social worker still intends to place a child in the home of the relative, prospective guardian, or other person who is not a licensed or certified foster parent, the county social worker shall cause a fingerprint clearance check to be conducted through the Department of Justice before placing a child in the home.

(1) If the fingerprint clearance check indicates that the person has no criminal record, the county social worker and court may consider the home of the relative, prospective guardian, or other child who is not a licensed or certified foster parent for placement of a child.

(2) If the fingerprint clearance check indicates that the person has been convicted of a crime that would preclude licensure under Section 1522 of the Health and Safety Code, the child shall not be placed in the home.

(3) Upon request from a county, the Director of Social Services may waive the application of this section pursuant to standards established in paragraph (1) of subdivision (g) of Section 1522 of the Health and Safety Code. The director shall grant or deny the waiver within 14 days of receipt of the county's request.

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

SEC. 5. The State Department of Social Services shall, with input from county welfare departments, report to the Legislature by January 1, 2002, regarding the number of foster children placed with relatives, the availability of relative placements, and the incidences of crimes perpetrated against foster children who are living in the homes of relatives.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

