

AMENDED IN SENATE MAY 17, 2005

AMENDED IN SENATE MAY 3, 2005

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL

No. 726

Introduced by Senator Florez

February 22, 2005

An act to amend Section ~~361.4~~ 361.2 of, and to add Sections ~~Section 366.23 and 366.24~~ to, the Welfare and Institutions Code, relating to dependent children.

LEGISLATIVE COUNSEL'S DIGEST

SB 726, as amended, Florez. Dependent children.

Existing law ~~governs dependency proceedings in the juvenile court, including status review hearings, reunification services, and proceedings to determine whether to return a child to his or her parent or legal guardian, or to terminate parental rights. Existing law requires, until January 1, 2010, social workers to visit the homes of, and to conduct criminal records checks of all persons living in the homes of, relatives and prospective guardians or other persons who are not licensed or certified foster parents before placing children in those homes requires a court, when ordering the removal of a child from a home, to determine if there is a parent of the child with whom the child was not living who desires to assume custody of the child, and to place the child with that parent unless the court finds that the placement would be detrimental to the safety, protection, or physical or emotional well-being of the child.~~

This bill would enact "Adam's Law," which would ~~require social workers to visit the home of, and conduct criminal records checks of all persons living in the home of, a noncustodial parent prior to the~~

~~placement of a child who has been removed from the custody of the other parent in that home. The bill would also require social workers to prepare, and the court to consider, reports regarding the observations of foster parents, as specified, prior to returning a child to the custody of a parent or legal guardian~~ *authorize a court to order that a social worker conduct a home visit within 3 months of placing a child with a noncustodial parent and to file a report with the court after conducting that home visit, as specified. The bill would also require a social worker to provide a "Caregiver Information Form" to a caregiver of a child for purposes of providing information regarding a noncustodial parent who is seeking placement or custody of the child and to ensure that the completed form is returned to the court for review and consideration before the child is placed with the noncustodial parent.* By imposing new duties on county employees, the bill would impose a state-mandated local program.

~~This bill would also require a court to require the social worker to conduct a 2nd home visit, as specified. Until that 2nd home visit occurs, the court would retain jurisdiction over that child. The bill would further require a court to order a parent or legal guardian to complete one or more parenting classes after reunification with a child under 6 years of age who had been placed in foster care.~~

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, 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.

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. This act shall be known and may be cited as
- 2 "Adam's Law."
- 3 ~~SEC. 2. 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~~
- 6 ~~noncustodial parent or other relative, or the home of any~~

1 ~~prospective guardian or other person who is not a licensed or~~
2 ~~certified foster parent, the county social worker shall visit the~~
3 ~~home to ascertain the appropriateness of the placement.~~

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

34 ~~(c) Whenever a child may be placed in the home of a~~
35 ~~nonecustodial parent or other relative, or a prospective guardian or~~
36 ~~other person who is not a licensed or certified foster parent, the~~
37 ~~county social worker shall cause a check of the Child Abuse~~
38 ~~Index pursuant to subdivision (a) of Section 11170 of the Penal~~
39 ~~Code to be requested from the Department of Justice. The Child~~

1 Abuse Index check shall be conducted on all persons over the age
2 of 18 years living in the home:

3 ~~(d) (1) If the criminal records check indicates that the person~~
4 ~~has no criminal record, the county social worker and court may~~
5 ~~consider the home of the noneustodial parent or other relative,~~
6 ~~prospective guardian, or other person who is not a licensed or~~
7 ~~certified foster parent for placement of a child.~~

8 ~~(2) If the criminal records check indicates that the person has~~
9 ~~been convicted of a crime that would preclude licensure under~~
10 ~~Section 1522 of the Health and Safety Code, the child may not be~~
11 ~~placed in the home, unless a criminal records exemption has been~~
12 ~~granted by the county, based on substantial and convincing~~
13 ~~evidence to support a reasonable belief that the person with the~~
14 ~~criminal conviction is of such good character as to justify the~~
15 ~~placement and not present a risk of harm to the child pursuant to~~
16 ~~paragraph (3).~~

17 ~~(3) (A) A county may issue a criminal records exemption only~~
18 ~~if that county has been granted permission by the Director of~~
19 ~~Social Services to issue criminal records exemptions. The county~~
20 ~~may file a request with the Director of Social Services seeking~~
21 ~~permission for the county to establish a procedure to evaluate and~~
22 ~~grant appropriate individual criminal records exemptions for~~
23 ~~persons described in subdivision (b). The director shall grant or~~
24 ~~deny the county's request within 14 days of receipt. The county~~
25 ~~shall evaluate individual criminal records in accordance with the~~
26 ~~standards and limitations set forth in paragraph (1) of subdivision~~
27 ~~(g) of Section 1522 of the Health and Safety Code, and in no~~
28 ~~event shall the county place a child in the home of a person who~~
29 ~~is ineligible for an exemption under that provision.~~

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

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

39 ~~(5) The State Department of Social Services shall not evaluate~~
40 ~~or grant criminal record 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 may 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).

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

(f) Upon request from an Indian tribe, the State Department of Social Services shall evaluate an exemption request, if needed, to allow placement into an Indian home that the tribe has designated for placement under the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) that would otherwise be barred under this section. However, if the county with jurisdiction over the child that is the subject of the tribe's request has established an approved procedure pursuant to paragraph (3) of subdivision (d), the tribe may request that the county evaluate the exemption request. Once a tribe has elected to have the exemption request reviewed by either the State Department of Social Services or the county, the exemption decision may only be made by that entity. Nothing in this subdivision limits the duty of a county social worker to evaluate the home for placement or to gather information needed to evaluate an exemption request.

(g) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 3. Section 366.23 is added to the Welfare and Institutions Code, to read:

366.23. (a) Prior to ordering the return of a child to the physical custody of his or her parent or legal guardian, the court shall order the social worker to prepare a report containing information obtained from an interview with the foster parents of the child regarding the needs of the child and any relevant additional information regarding the child, including, but not limited to, the behavior of the parent or legal guardian of the

1 child as observed by the foster parent while the child resided with
2 the foster parent. The social worker shall interview the foster
3 parents and report to the court in a timely manner. The court may
4 not return a child to the physical custody of his or her parents
5 until the court has received and considered this report.

6 (b) (1) Notwithstanding any other provision of this part, the
7 court may not return a child who is within the jurisdiction of the
8 juvenile court pursuant to Section 300 and who has been
9 removed from the physical custody of his or her parent or
10 guardian, to the physical custody of that parent or guardian,
11 unless the court requires the social worker to conduct a second
12 home visit and to make a written report to the court regarding the
13 child's living conditions within the home within a reasonable
14 period of time after the child is returned to the physical custody
15 of the parent or guardian. If a second home visit is not completed
16 within a reasonable period of time after the child is returned to
17 the physical custody of the parent or guardian, or if the social
18 worker conducts a second home visit and makes a determination
19 in a written report to the court that the home in which the child
20 will reside is not safe and adequate to ensure the continued safety
21 and protection of the child, the child shall be removed from the
22 home.

23 (2) Pursuant to paragraph (1), a child shall remain within the
24 jurisdiction of the juvenile court after he or she is returned to the
25 physical custody of his or her parent or guardian until the social
26 worker completes the second home visit and determines that the
27 home is safe and adequate to ensure the continued safety and
28 protection of the child.

29 SEC. 4. Section 366.24 is added to the Welfare and
30 Institutions Code, to read:

31 366.24. If a dependent child of the court who had been
32 placed in foster care is returned to the physical custody of his or
33 her parent or legal guardian and if that child is less than six years
34 of age, the court shall order the parent or legal guardian to
35 complete one or more parenting classes subsequent to his or her
36 reunification with the child.

37 SEC. 5. If the Commission on State Mandates determines that
38 this act contains costs mandated by the state, reimbursement to
39 local agencies and school districts for those costs shall be made

1 pursuant to Part 7 (commencing with Section 17500) of Division
2 4 of Title 2 of the Government Code.

3 SEC. 2. Section 361.2 of the Welfare and Institutions Code is
4 amended to read:

5 361.2. (a) When a court orders removal of a child pursuant to
6 Section 361, the court shall first determine whether there is a
7 parent of the child, with whom the child was not residing at the
8 time that the events or conditions arose that brought the child
9 within the provisions of Section 300, who desires to assume
10 custody of the child. If that parent requests custody, the court
11 shall place the child with the parent unless it finds that placement
12 with that parent would be detrimental to the safety, protection, or
13 physical or emotional well-being of the child.

14 (b) If the court places the child with that parent it may do
15 either any of the following:

16 (1) Order that the parent become legal and physical custodian
17 of the child. The court may also provide reasonable visitation by
18 the noncustodial parent. The court shall then terminate its
19 jurisdiction over the child. The custody order shall continue
20 unless modified by a subsequent order of the superior court. The
21 order of the juvenile court shall be filed in any domestic relation
22 proceeding between the parents.

23 (2) Order, after considering concerns raised by the caretaker
24 regarding the parent, that the parent assume custody subject to
25 the jurisdiction of the juvenile court and require that a home visit
26 be conducted within three months. After the social worker
27 conducts the home visit and files his or her report with the court,
28 the court may then take the action described in paragraph (1),
29 (3), or this paragraph.

30 (3) Order that the parent assume custody subject to the
31 supervision of the juvenile court. In that case the court may order
32 that reunification services be provided to the parent or guardian
33 from whom the child is being removed, or the court may order
34 that services be provided solely to the parent who is assuming
35 physical custody in order to allow that parent to retain later
36 custody without court supervision, or that services be provided to
37 both parents, in which case the court shall determine, at review
38 hearings held pursuant to Section 366, which parent, if either,
39 shall have custody of the child.

1 (c) The court shall make a finding either in writing or on the
2 record of the basis for its determination under subdivisions (a)
3 and (b).

4 (d) Part 6 (commencing with Section 7950) of Division 12 of
5 the Family Code shall apply to the placement of a child pursuant
6 to paragraphs (1) and (2) of subdivision (e).

7 (e) When the court orders removal pursuant to Section 361,
8 the court shall order the care, custody, control, and conduct of the
9 child to be under the supervision of the social worker who may
10 place the child in any of the following:

11 (1) The home of a noncustodial parent as described in
12 subdivision (a).

13 (2) The approved home of a relative.

14 (3) The approved home of a nonrelative extended family
15 member as defined in Section 362.7.

16 (4) A foster home in which the child has been placed before an
17 interruption in foster care, if that placement is in the best interest
18 of the child and space is available.

19 (5) A suitable licensed community care facility.

20 (6) With a foster family agency to be placed in a suitable
21 licensed foster family home or certified family home which has
22 been certified by the agency as meeting licensing standards.

23 (7) A home or facility in accordance with the federal Indian
24 Child Welfare Act.

25 (8) A child under the age of six years may be placed in a
26 community care facility licensed as a group home for children, or
27 a temporary shelter care facility as defined in Section 1530.8 of
28 the Health and Safety Code, only under any of the following
29 circumstances:

30 (A) When a case plan indicates that placement is for purposes
31 of providing specialized treatment to the child, the case plan
32 specifies the need for, nature of, and anticipated duration of this
33 treatment, and the facility meets the applicable regulations
34 adopted under Section 1530.8 of the Health and Safety Code and
35 standards developed pursuant to Section 11467.1. The
36 specialized treatment period shall not exceed 120 days, unless
37 additional time is needed pursuant to the case plan as
38 documented by the caseworker and approved by the
39 caseworker's supervisor.

(B) When a case plan indicates that placement is for purposes of providing family reunification services. In addition, the facility offers family reunification services that meet the needs of the individual child and his or her family, permits parents to have reasonable access to their children 24 hours a day, encourages extensive parental involvement in meeting the daily needs of their children, and employs staff trained to provide family reunification services. In addition, one of the following conditions exists:

(i) The child's parent is also a ward of the court and resides in the facility.

(ii) The child's parent is participating in a treatment program affiliated with the facility and the child's placement in the facility facilitates the coordination and provision of reunification services.

(iii) Placement in the facility is the only alternative that permits the parent to have daily 24-hour access to the child in accordance with the case plan, to participate fully in meeting all of the daily needs of the child, including feeding and personal hygiene, and to have access to necessary reunification services.

(f) (1) If the child is taken from the physical custody of the child's parent or guardian and unless the child is placed with relatives, the child shall be placed in foster care in the county of residence of the child's parent or guardian in order to facilitate reunification of the family.

(2) In the event that there are no appropriate placements available in the parent's or guardian's county of residence, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parent's or guardian's community of residence.

(3) Nothing in this section shall be interpreted as requiring multiple disruptions of the child's placement corresponding to frequent changes of residence by the parent or guardian. In determining whether the child should be moved, the social worker shall take into consideration the potential harmful effects of disrupting the placement of the child and the parent's or guardian's reason for the move.

(4) When it has been determined that it is necessary for a child to be placed in a county other than the child's parent's or guardian's county of residence, the specific reason the

1 out-of-county placement is necessary shall be documented in the
2 child's case plan. If the reason the out-of-county placement is
3 necessary is the lack of resources in the sending county to meet
4 the specific needs of the child, those specific resource needs shall
5 be documented in the case plan.

6 (5) When it has been determined that a child is to be placed
7 out-of-county either in a group home or with a foster family
8 agency for subsequent placement in a certified foster family
9 home, and the sending county is to maintain responsibility for
10 supervision and visitation of the child, the sending county shall
11 develop a plan of supervision and visitation that specifies the
12 supervision and visitation activities to be performed and specifies
13 that the sending county is responsible for performing those
14 activities. In addition to the plan of supervision and visitation, the
15 sending county shall document information regarding any known
16 or suspected dangerous behavior of the child that indicates the
17 child may pose a safety concern in the receiving county. Upon
18 implementation of the Child Welfare Services Case Management
19 System, the plan of supervision and visitation, as well as
20 information regarding any known or suspected dangerous
21 behavior of the child, shall be made available to the receiving
22 county upon placement of the child in the receiving county. If
23 placement occurs on a weekend or holiday, the information shall
24 be made available to the receiving county on or before the end of
25 the next business day.

26 (6) When it has been determined that a child is to be placed
27 out-of-county and the sending county plans that the receiving
28 county shall be responsible for the supervision and visitation of
29 the child, the sending county shall develop a formal agreement
30 between the sending and receiving counties. The formal
31 agreement shall specify the supervision and visitation to be
32 provided the child, and shall specify that the receiving county is
33 responsible for providing the supervision and visitation. The
34 formal agreement shall be approved and signed by the sending
35 and receiving counties prior to placement of the child in the
36 receiving county. In addition, upon completion of the case plan,
37 the sending county shall provide a copy of the completed case
38 plan to the receiving county. The case plan shall include
39 information regarding any known or suspected dangerous

1 behavior of the child that indicates the child may pose a safety
2 concern to the receiving county.

3 (g) Whenever the social worker must change the placement of
4 the child and is unable to find a suitable placement within the
5 county and must place the child outside the county, the
6 placement shall not be made until he or she has served written
7 notice on the parent or guardian at least 14 days prior to the
8 placement, unless the child's health or well-being is endangered
9 by delaying the action or would be endangered if prior notice
10 were given. The notice shall state the reasons which require
11 placement outside the county. The parent or guardian may object
12 to the placement not later than seven days after receipt of the
13 notice and, upon objection, the court shall hold a hearing not later
14 than five days after the objection and prior to the placement. The
15 court shall order out-of-county placement if it finds that the
16 child's particular needs require placement outside the county.

17 (h) Where the court has ordered removal of the child from the
18 physical custody of his or her parents pursuant to Section 361,
19 the court shall consider whether the family ties and best interest
20 of the child will be served by granting visitation rights to the
21 child's grandparents. The court shall clearly specify those rights
22 to the social worker.

23 (i) Where the court has ordered removal of the child from the
24 physical custody of his or her parents pursuant to Section 361,
25 the court shall consider whether there are any siblings under the
26 court's jurisdiction, the nature of the relationship between the
27 child and his or her siblings, the appropriateness of developing or
28 maintaining the sibling relationships pursuant to Section 16002,
29 and the impact of the sibling relationships on the child's
30 placement and planning for legal permanence.

31 *SEC. 3 Section 366.23 is added to the Welfare and*
32 *Institutions Code, to read:*

33 *366.23. If a noncustodial parent is seeking placement or*
34 *custody of a child, the social worker shall inform the caretaker*
35 *that he or she has the right to provide the court with input*
36 *regarding the placement of the child. The social worker shall*
37 *provide the "Caregiver Information Form" to the caretaker to*
38 *complete and request the caregiver provide any particular*
39 *information the caregiver might have regarding the noncustodial*
40 *parent now seeking custody. If a report is required or otherwise*

1 *due, the completed form shall be attached to the social worker's*
2 *report to be filed with the court. If not, the social worker shall*
3 *ensure that the completed form is returned to the court for review*
4 *and consideration before the child is placed with the*
5 *noncustodial parent.*

6 *SEC. 4. If the Commission on State Mandates determines that*
7 *this act contains costs mandated by the state, reimbursement to*
8 *local agencies and school districts for those costs shall be made*
9 *pursuant to Part 7 (commencing with Section 17500) of Division*
10 *4 of Title 2 of the Government Code.*