

Senate Bill No. 1641

Passed the Senate August 30, 2006

Secretary of the Senate

Passed the Assembly August 28, 2006

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1536.2 of, and to add Section 1530.3 to, the Health and Safety Code, and to amend Section 361.2 of the Welfare and Institutions Code, relating to foster care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1641, Soto. Foster care providers.

Existing law provides for the licensure and regulation of community care facilities, including foster family agencies, foster family homes, small family homes, and group homes as defined, by the State Department of Social Services.

This bill would require the Director of Social Services to report to the Legislature on the progress of the department's children's residential regulation review workgroup, including recommendations being considered for statutory, regulatory, and policy changes, and any workplan for the implementation of those recommendations.

Under existing law, when a placement agency has placed a child with a foster family agency, the foster family agency is required to place the child in a licensed foster family home or certified family home that best meets the needs of the child.

This bill would expand this provision to include instances when a placement agency places a child with a relative caregiver, a nonrelative extended family member, a licensed foster family home, or a group home. The bill would define a home that meets the best needs of the child to include a home that meets the child's health, safety, and well-being needs, is the least restrictive and most family-like environment, and allows the child to engage in reasonable, age-appropriate day-to-day activities, as specified. The bill would require the foster child's caregiver to use a reasonable and prudent parent standard, as defined, to determine these age-appropriate activities.

Violation of the provisions relating to the licensing and regulation of community care facilities is a misdemeanor. By revising the requirements applicable to placement agencies and foster care providers, the bill would change the definition of a crime, thereby imposing 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.

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

SECTION 1. The Legislature finds and declares as follows:

(a) Many of the state's foster care licensing statutes, regulations, and policies have understandably been developed with the sole objective of protecting the safety of children and youth in foster care, with little regard for the creation of a foster home environment that resembles actual nonfoster care living environments. In many cases these rules serve to stigmatize foster children and youth by subjecting them to conventions dissimilar to other children. These rules are also often viewed as unreasonable by prospective foster parents and therefore serve to discourage them from becoming foster parents. Foster care licensing requirements should be developed and implemented in a manner that is consistent with current program best practices and the goals and objectives of the Child Welfare System Improvement and Accountability Act of 2001 (Chapter 678 of the Statutes of 2001).

(b) The State Department of Social Services has convened a children's residential regulation review workgroup, which includes representatives of the department and interested stakeholders, to review community care licensing foster care statutes, regulations, and policies, to ensure that they promote the safety and well-being of children and youth in foster care, and who are leaving foster care.

(c) It is therefore the intent of the Legislature to ensure that youth placed in out-of-home foster care be given an opportunity to live in an environment that resembles as closely as possible nonfoster care families. It is the further intent of the Legislature to ensure that all licensing statutes, regulations, and policies serve to promote the well-being of children and youth in foster care and who are leaving foster care and to ensure children and youth are safe and protected in foster care.

SEC. 2. Section 1530.3 is added to the Health and Safety Code, to read:

1530.3. The director shall report to the Legislature during the 2007–08 budget hearings on the progress of the department’s children’s residential regulation review workgroup. The report shall include all of the following:

(a) A summary of the activities of the workgroup up to the date of the report.

(b) The timeline for completion of the workgroup’s activities.

(c) Any recommendations being considered for statutory, regulatory, and policy changes, and any workplan for the implementation of those recommendations.

SEC. 3. Section 1536.2 of the Health and Safety Code is amended to read:

1536.2. (a) When a placement agency has placed a child with a foster family agency for subsequent placement in a certified family home, the foster family agency shall ensure placement of the child in a home that best meets the needs of the child.

(b) A home that best meets the needs of the child shall satisfy all of the following criteria:

(1) The child’s caregiver is able to meet the health, safety, and well-being needs of the child.

(2) The child’s caregiver is permitted to maintain the least restrictive and most family-like environment that serves the needs of the child.

(3) The child is permitted to engage in reasonable, age-appropriate, day-to-day activities that promote the most family-like environment for the foster child.

(4) The foster child’s caregiver shall use a reasonable and prudent parent standard, as defined in paragraph (2) of subdivision (a) of Section 362.04 of the Welfare and Institutions Code, to determine activities that are age-appropriate and meet the needs of the child. Nothing in this section shall be construed to permit a child’s caregiver to permit the child to engage in activities that carry an unreasonable risk of harm, or subject the child to abuse or neglect.

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

361.2. (a) When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a

parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.

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

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

(2) Order that the parent assume custody subject to the jurisdiction of the juvenile court and require that a home visit be conducted within three months. In determining whether to take the action described in this paragraph, the court shall consider any concerns that have been raised by the child's current caregiver regarding the parent. After the social worker conducts the home visit and files his or her report with the court, the court may then take the action described in paragraph (1), (3), or this paragraph. However, nothing in this paragraph shall be interpreted to imply that the court is required to take the action described in this paragraph as a prerequisite to the court taking the action described in either paragraph (1) or paragraph (3).

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

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

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

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

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

(2) The approved home of a relative.

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

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

(5) A suitable licensed community care facility.

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

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

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

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

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

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

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

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

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

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

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

(j) (1) When an agency has placed a child with a relative caregiver, a nonrelative extended family member, a licensed foster family home, or a group home, the agency shall ensure placement of the child in a home that, to the fullest extent possible, best meets the day-to-day needs of the child. A home that best meets the day-to-day needs of the child shall satisfy all of the following criteria:

(A) The child's caregiver is able to meet the day-to-day health, safety, and well-being needs of the child.

(B) The child's caregiver is permitted to maintain the least restrictive and most family-like environment that serves the day-to-day needs of the child.

(C) The child is permitted to engage in reasonable, age-appropriate day-to-day activities that promote the most family-like environment for the foster child.

(2) The foster child's caregiver shall use a reasonable and prudent parent standard, as defined in paragraph (2) of subdivision (a) of Section 362.04, to determine day-to-day activities that are age-appropriate to meet the needs of the child. Nothing in this section shall be construed to permit a child's caregiver to permit the child to engage in day-to-day activities that carry an unreasonable risk of harm, or subject the child to abuse or neglect.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2006

Governor