

AMENDED IN SENATE MARCH 29, 2006

SENATE BILL

No. 1667

Introduced by Senator Kuehl

February 24, 2006

An act to amend ~~Section 295~~ *Sections 295 and 366.21* of the Welfare and Institutions Code, relating to dependent children.

LEGISLATIVE COUNSEL'S DIGEST

SB 1667, as amended, Kuehl. Dependent children.

Existing law authorizes the juvenile court to adjudge a minor who has been abused or neglected, or who meets other specified criteria, to be a dependent child of the court. Existing law requires a social worker or probation officer to give notice of review hearings relating to the adoption or legal guardianship of the minor to specified persons. Among others, the social worker or probation officer is required to give notice to the foster parents, Indian custodian, relative caregivers, community care facilitator or foster family agency having physical custody of the child, if a child is removed from the physical custody of the parents or legal guardian.

This bill would authorize any foster parent, Indian custodian, relative caregiver, community care facilitator, or foster family agency who is notified, as described above, to attend all hearings and to submit any information he or she deems relevant to the court in writing.

Existing law specifies the procedure for conducting hearings to determine the status of a dependent child of the juvenile court, including notice requirements and report filing deadlines. Existing law requires a social worker, in specific circumstances, to file a summary of his or her recommendations with the juvenile court at

least 10 days prior to the hearing. Existing law further requires a social worker, at least 10 days prior to a status hearing, to file a summary of his or her recommendations for disposition to a child's foster parents, relative caregivers, or foster parents approved for adoption, if the child is removed from the physical custody of his or her parent prior to the hearing.

This bill also would require a social worker to include with his or her summary of recommendations a copy of the Judicial Council Caregiver Information Form, in the caregiver's primary language when available, along with instructions on how to file the form with the court. By requiring social workers to perform additional duties, this bill would impose a state-mandated local program.

Existing law authorizes a foster parent, relative caregiver, or certified foster parent, as defined, prior to any hearing involving a child over whom he or she has custody, to file with the juvenile court a report containing his or her recommendation for disposition.

This bill would authorize a foster parent, relative caregiver, or certified foster parent, in the alternative, to use a Judicial Council Caregiver Form containing his or her recommendation.

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: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

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

- 1 SECTION 1. Section 295 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 295. The social worker or probation officer shall give notice
- 4 of review hearings held pursuant to Section 366.3 in the
- 5 following manner:
- 6 (a) Notice of the hearing shall be given to the following
- 7 persons:
- 8 (1) The mother.

1 (2) The presumed father.

2 (3) The legal guardian or guardians.

3 (4) The child, if the child is 10 years of age or older.

4 (5) Any known sibling of the child who is the subject of the
5 hearing if that sibling either is the subject of a dependency
6 proceeding or has been adjudged to be a dependent child of the
7 juvenile court. If the sibling is 10 years of age or older, the
8 sibling, the sibling's caregiver, and the sibling's attorney. If the
9 sibling is under 10 years of age, the sibling's caregiver and the
10 sibling's attorney. However, notice is not required to be given to
11 any sibling whose matter is calendared in the same court on the
12 same day.

13 (6) The foster parents, Indian custodian, relative caregivers,
14 community care facility, or foster family agency having physical
15 custody of the child if a child is removed from the physical
16 custody of the parents or legal guardian. The person notified may
17 attend all hearings and may submit any information he or she
18 deems relevant to the court in writing.

19 (7) The attorney of record if that attorney of record was not
20 present at the time that the hearing was set by the court.

21 (8) The alleged father or fathers, but only if the
22 recommendation is to set a new hearing pursuant to Section
23 366.26.

24 (9) If the court knows or has reason to know that an Indian
25 child is involved, then to the Indian custodian and the tribe of
26 that child. If the identity or location of the parent or Indian
27 custodian and the tribe cannot be determined, notice shall be
28 given to the Bureau of Indian Affairs.

29 (b) No notice is required for a parent whose parental rights
30 have been terminated.

31 (c) The notice of the review hearing shall be served no earlier
32 than 30 days, nor later than 15 days, before the hearing. In the
33 case of an Indian child, if notice is given to the Bureau of Indian
34 Affairs, the bureau shall have 15 days after receipt to provide the
35 requisite notice to the parent or Indian custodian and the tribe.

36 (d) (1) The notice of the review hearing shall contain a
37 statement regarding the nature of the hearing to be held, any
38 recommended change in the custody or status of the child, and
39 any recommendation that the court set a new hearing pursuant to
40 Section 366.26 in order to select a more permanent plan.

(2) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

(e) Service of notice shall be by first-class mail addressed to the last known address of the person to be provided notice. In the case of an Indian child, notice shall be by registered mail, return receipt requested.

(f) If the child is ordered into a permanent plan of legal guardianship, and subsequently a petition to terminate or modify the guardianship is filed, the probation officer or social worker shall serve notice of the petition not less than 15 court days prior to the hearing on all persons listed in subdivision (a) and on the court that established legal guardianship if it is in another county.

SEC. 2. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Sections 294 and 295, notice of the hearing shall be provided pursuant to Section 293.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between a child who is 10 years of age or older and has been in out-of-home placement for six months or longer and individuals who are important to the child, consistent with the child's best interests; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian; and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors

described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any foster parents, relative caregivers, and certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child. *The social worker shall include a copy of the Judicial Council Caregiver Information Form (JV-290) with the summary of recommendations to the child's foster parents, relative caregivers, or foster parents approved for adoption, in the caregiver's primary language when available, along with information on how to file the form with the court.*

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, may file with the court a report, *or a Judicial Council Caregiver Form (JV-290)*, containing his or her

1 recommendation for disposition. The court shall consider the
2 report and recommendation filed pursuant to this subdivision
3 prior to determining any disposition.

4 (e) At the review hearing held six months after the initial
5 dispositional hearing, the court shall order the return of the child
6 to the physical custody of his or her parent or legal guardian
7 unless the court finds, by a preponderance of the evidence, that
8 the return of the child to his or her parent or legal guardian would
9 create a substantial risk of detriment to the safety, protection, or
10 physical or emotional well-being of the child. The social worker
11 shall have the burden of establishing that detriment. The failure
12 of the parent or legal guardian to participate regularly and make
13 substantive progress in court-ordered treatment programs shall be
14 prima facie evidence that return would be detrimental. In making
15 its determination, the court shall review and consider the social
16 worker's report and recommendations and the report and
17 recommendations of any child advocate appointed pursuant to
18 Section 356.5; and shall consider the efforts or progress, or both,
19 demonstrated by the parent or legal guardian and the extent to
20 which he or she availed himself or herself to services provided.

21 Whether or not the child is returned to a parent or legal
22 guardian, the court shall specify the factual basis for its
23 conclusion that the return would be detrimental or would not be
24 detrimental. The court also shall make appropriate findings
25 pursuant to subdivision (a) of Section 366; and, where relevant,
26 shall order any additional services reasonably believed to
27 facilitate the return of the child to the custody of his or her parent
28 or legal guardian. The court shall also inform the parent or legal
29 guardian that if the child cannot be returned home by the
30 12-month permanency hearing, a proceeding pursuant to Section
31 366.26 may be instituted. This section does not apply in a case
32 where, pursuant to Section 361.5, the court has ordered that
33 reunification services shall not be provided.

34 If the child was under the age of three years on the date of the
35 initial removal, or is a member of a sibling group described in
36 paragraph (3) of subdivision (a) of Section 361.5, and the court
37 finds by clear and convincing evidence that the parent failed to
38 participate regularly and make substantive progress in a
39 court-ordered treatment plan, the court may schedule a hearing
40 pursuant to Section 366.26 within 120 days. If, however, the

1 court finds there is a substantial probability that the child, who
2 was under the age of three years on the date of initial removal or
3 is a member of a sibling group described in paragraph (3) of
4 subdivision (a) of Section 361.5, may be returned to his or her
5 parent or legal guardian within six months or that reasonable
6 services have not been provided, the court shall continue the case
7 to the 12-month permanency hearing.

8 For the purpose of placing and maintaining a sibling group
9 together in a permanent home, the court, in making its
10 determination to schedule a hearing pursuant to Section 366.26
11 for some or all members of a sibling group, as described in
12 paragraph (3) of subdivision (a) of Section 361.5, shall review
13 and consider the social worker's report and recommendations.
14 Factors the report shall address, and the court shall consider, may
15 include, but need not be limited to, whether the sibling group was
16 removed from parental care as a group, the closeness and
17 strength of the sibling bond, the ages of the siblings, the
18 appropriateness of maintaining the sibling group together, the
19 detriment to the child if sibling ties are not maintained, the
20 likelihood of finding a permanent home for the sibling group,
21 whether the sibling group is currently placed together in a
22 preadoptive home or has a concurrent plan goal of legal
23 permanency in the same home, the wishes of each child whose
24 age and physical and emotional condition permits a meaningful
25 response, and the best interest of each child in the sibling group.
26 The court shall specify the factual basis for its finding that it is in
27 the best interest of each child to schedule a hearing pursuant to
28 Section 366.26 in 120 days for some or all of the members of the
29 sibling group.

30 If the child was removed initially under subdivision (g) of
31 Section 300 and the court finds by clear and convincing evidence
32 that the whereabouts of the parent are still unknown, or the
33 parent has failed to contact and visit the child, the court may
34 schedule a hearing pursuant to Section 366.26 within 120 days. If
35 the court finds by clear and convincing evidence that the parent
36 has been convicted of a felony indicating parental unfitness, the
37 court may schedule a hearing pursuant to Section 366.26 within
38 120 days.

39 If the child had been placed under court supervision with a
40 previously noncustodial parent pursuant to Section 361.2, the

1 court shall determine whether supervision is still necessary. The
2 court may terminate supervision and transfer permanent custody
3 to that parent, as provided for by paragraph (1) of subdivision (b)
4 of Section 361.2.

5 In all other cases, the court shall direct that any reunification
6 services previously ordered shall continue to be offered to the
7 parent or legal guardian pursuant to the time periods set forth in
8 subdivision (a) of Section 361.5, provided that the court may
9 modify the terms and conditions of those services.

10 If the child is not returned to his or her parent or legal
11 guardian, the court shall determine whether reasonable services
12 that were designed to aid the parent or legal guardian in
13 overcoming the problems that led to the initial removal and the
14 continued custody of the child have been provided or offered to
15 the parent or legal guardian. The court shall order that those
16 services be initiated, continued, or terminated.

17 (f) The permanency hearing shall be held no later than 12
18 months after the date the child entered foster care, as that date is
19 determined pursuant to subdivision (a) of Section 361.5. At the
20 permanency hearing, the court shall determine the permanent
21 plan for the child, which shall include a determination of whether
22 the child will be returned to the child's home and, if so, when,
23 within the time limits of subdivision (a) of Section 361.5. The
24 court shall order the return of the child to the physical custody of
25 his or her parent or legal guardian unless the court finds, by a
26 preponderance of the evidence, that the return of the child to his
27 or her parent or legal guardian would create a substantial risk of
28 detriment to the safety, protection, or physical or emotional
29 well-being of the child. The social worker shall have the burden
30 of establishing that detriment. The court shall also determine
31 whether reasonable services that were designed to aid the parent
32 or legal guardian to overcome the problems that led to the initial
33 removal and continued custody of the child have been provided
34 or offered to the parent or legal guardian. For each youth 16
35 years of age and older, the court shall also determine whether
36 services have been made available to assist him or her in making
37 the transition from foster care to independent living. The failure
38 of the parent or legal guardian to participate regularly and make
39 substantive progress in court-ordered treatment programs shall be
40 prima facie evidence that return would be detrimental. In making

1 its determination, the court shall review and consider the social
2 worker's report and recommendations and the report and
3 recommendations of any child advocate appointed pursuant to
4 Section 356.5, shall consider the efforts or progress, or both,
5 demonstrated by the parent or legal guardian and the extent to
6 which he or she availed himself or herself of services provided,
7 and shall make appropriate findings pursuant to subdivision (a)
8 of Section 366.

9 Whether or not the child is returned to his or her parent or legal
10 guardian, the court shall specify the factual basis for its decision.
11 If the child is not returned to a parent or legal guardian, the court
12 shall specify the factual basis for its conclusion that the return
13 would be detrimental. The court also shall make a finding
14 pursuant to subdivision (a) of Section 366.

15 (g) If the time period in which the court-ordered services were
16 provided has met or exceeded the time period set forth in
17 paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as
18 appropriate, and a child is not returned to the custody of a parent
19 or legal guardian at the permanency hearing held pursuant to
20 subdivision (f), the court shall do one of the following:

21 (1) Continue the case for up to six months for a permanency
22 review hearing, provided that the hearing shall occur within 18
23 months of the date the child was originally taken from the
24 physical custody of his or her parent or legal guardian. The court
25 shall continue the case only if it finds that there is a substantial
26 probability that the child will be returned to the physical custody
27 of his or her parent or legal guardian and safely maintained in the
28 home within the extended period of time or that reasonable
29 services have not been provided to the parent or legal guardian.
30 For the purposes of this section, in order to find a substantial
31 probability that the child will be returned to the physical custody
32 of his or her parent or legal guardian and safely maintained in the
33 home within the extended period of time, the court shall be
34 required to find all of the following:

35 (A) That the parent or legal guardian has consistently and
36 regularly contacted and visited with the child.

37 (B) That the parent or legal guardian has made significant
38 progress in resolving problems that led to the child's removal
39 from the home.

1 (C) The parent or legal guardian has demonstrated the capacity
2 and ability both to complete the objectives of his or her treatment
3 plan and to provide for the child's safety, protection, physical
4 and emotional well-being, and special needs.

5 For purposes of this subdivision, the court's decision to
6 continue the case based on a finding or substantial probability
7 that the child will be returned to the physical custody of his or
8 her parent or legal guardian is a compelling reason for
9 determining that a hearing held pursuant to Section 366.26 is not
10 in the best interests of the child.

11 The court shall inform the parent or legal guardian that if the
12 child cannot be returned home by the next permanency review
13 hearing, a proceeding pursuant to Section 366.26 may be
14 instituted. The court may not order that a hearing pursuant to
15 Section 366.26 be held unless there is clear and convincing
16 evidence that reasonable services have been provided or offered
17 to the parent or legal guardian.

18 (2) Order that a hearing be held within 120 days, pursuant to
19 Section 366.26, but only if the court does not continue the case to
20 the permanency planning review hearing and there is clear and
21 convincing evidence that reasonable services have been provided
22 or offered to the parents or legal guardians.

23 (3) Order that the child remain in long-term foster care, but
24 only if the court finds by clear and convincing evidence, based
25 upon the evidence already presented to it, including a
26 recommendation by the State Department of Social Services
27 when it is acting as an adoption agency in counties that are not
28 served by a county adoption agency or by a licensed county
29 adoption agency, that there is a compelling reason for
30 determining that a hearing held pursuant to Section 366.26 is not
31 in the best interest of the child because the child is not a proper
32 subject for adoption and has no one willing to accept legal
33 guardianship. For purposes of this section, a recommendation by
34 the State Department of Social Services when it is acting as an
35 adoption agency in counties that are not served by a county
36 adoption agency or by a licensed county adoption agency that
37 adoption is not in the best interest of the child shall constitute a
38 compelling reason for the court's determination. That
39 recommendation shall be based on the present circumstances of

1 the child and may not preclude a different recommendation at a
2 later date if the child's circumstances change.

3 If the court orders that a child who is 10 years of age or older
4 remain in long-term foster care, the court shall determine
5 whether the agency has made reasonable efforts to maintain the
6 child's relationships with individuals other than the child's
7 siblings who are important to the child, consistent with the
8 child's best interests, and may make any appropriate order to
9 ensure that those relationships are maintained.

10 (h) In any case in which the court orders that a hearing
11 pursuant to Section 366.26 shall be held, it shall also order the
12 termination of reunification services to the parent or legal
13 guardian. The court shall continue to permit the parent or legal
14 guardian to visit the child pending the hearing unless it finds that
15 visitation would be detrimental to the child. The court shall make
16 any other appropriate orders to enable the child to maintain
17 relationships with individuals, other than the child's siblings,
18 who are important to the child, consistent with the child's best
19 interests.

20 (i) Whenever a court orders that a hearing pursuant to Section
21 366.26 shall be held, it shall direct the agency supervising the
22 child and the licensed county adoption agency, or the State
23 Department of Social Services when it is acting as an adoption
24 agency in counties that are not served by a county adoption
25 agency, to prepare an assessment that shall include:

26 (1) Current search efforts for an absent parent or parents or
27 legal guardians.

28 (2) A review of the amount of and nature of any contact
29 between the child and his or her parents or legal guardians and
30 other members of his or her extended family since the time of
31 placement. Although the extended family of each child shall be
32 reviewed on a case-by-case basis, "extended family" for the
33 purpose of this paragraph shall include, but not be limited to, the
34 child's siblings, grandparents, aunts, and uncles.

35 (3) An evaluation of the child's medical, developmental,
36 scholastic, mental, and emotional status.

37 (4) A preliminary assessment of the eligibility and
38 commitment of any identified prospective adoptive parent or
39 legal guardian, particularly the caretaker, to include a social
40 history including screening for criminal records and prior

1 referrals for child abuse or neglect, the capability to meet the
2 child's needs, and the understanding of the legal and financial
3 rights and responsibilities of adoption and guardianship. If a
4 proposed guardian is a relative of the minor, and the relative was
5 assessed for foster care placement of the minor prior to January
6 1, 1998, the assessment shall also consider, but need not be
7 limited to, all of the factors specified in subdivision (a) of
8 Section 361.3.

9 (5) The relationship of the child to any identified prospective
10 adoptive parent or legal guardian, the duration and character of
11 the relationship, the motivation for seeking adoption or
12 guardianship, and a statement from the child concerning
13 placement and the adoption or guardianship, unless the child's
14 age or physical, emotional, or other condition precludes his or
15 her meaningful response, and if so, a description of the condition.

16 (6) A description of efforts to be made to identify a
17 prospective adoptive parent or legal guardian, including, but not
18 limited to, child-specific recruitment and listing on an adoption
19 exchange.

20 (7) An analysis of the likelihood that the child will be adopted
21 if parental rights are terminated.

22 (j) If, at any hearing held pursuant to Section 366.26, a
23 guardianship is established for the minor with a relative, and
24 juvenile court dependency is subsequently dismissed, the relative
25 shall be eligible for aid under the Kin-GAP program as provided
26 in Article 4.5 (commencing with Section 11360) of Chapter 2 of
27 Part 3 of Division 9.

28 (k) As used in this section, "relative" means an adult who is
29 related to the minor by blood, adoption, or affinity within the
30 fifth degree of kinship, including stepparents, stepsiblings, and
31 all relatives whose status is preceded by the words "great,"
32 "great-great," or "grand," or the spouse of any of those persons
33 even if the marriage was terminated by death or dissolution.

34 (l) For purposes of this section, evidence of any of the
35 following circumstances may not, in and of itself, be deemed a
36 failure to provide or offer reasonable services:

37 (1) The child has been placed with a foster family that is
38 eligible to adopt a child, or has been placed in a preadoptive
39 home.

1 (2) The case plan includes services to make and finalize a
2 permanent placement for the child if efforts to reunify fail.

3 (3) Services to make and finalize a permanent placement for
4 the child, if efforts to reunify fail, are provided concurrently with
5 services to reunify the family.

6 (m) The implementation and operation of the amendments to
7 subdivisions (c) and (g) enacted at the 2005–06 Regular Session
8 shall be subject to appropriation through the budget process and
9 by phase, as provided in Section 366.35.

10 *SEC. 3. If the Commission on State Mandates determines that*
11 *this act contains costs mandated by the state, reimbursement to*
12 *local agencies and school districts for those costs shall be made*
13 *pursuant to Part 7 (commencing with Section 17500) of Division*
14 *4 of Title 2 of the Government Code.*