

AMENDED IN SENATE SEPTEMBER 3, 2009

AMENDED IN SENATE AUGUST 19, 2009

AMENDED IN SENATE JUNE 18, 2009

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY APRIL 20, 2009

AMENDED IN ASSEMBLY MARCH 27, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 938

**Introduced by Committee on Judiciary (Feuer (Chair), Brownley,
Evans, Jones, Krekorian, Lieu, and Monning)**

February 26, 2009

An act to amend Sections 309 and 628 of the Welfare and Institutions Code, relating to children.

LEGISLATIVE COUNSEL'S DIGEST

AB 938, as amended, Committee on Judiciary. Relative caregivers and foster parents.

(1) Existing law authorizes a social worker to take a child who is at risk of abuse or neglect into temporary custody under specified circumstances. Existing law requires the social worker to investigate the circumstances of the child and the facts surrounding the taking of the child into custody. Existing law requires that the social worker immediately release the child to the custody of the child's parent or guardian, or other responsible relative, except under certain conditions. If the child is not released to the custody of his or her parent or guardian, the child is deemed to be detained, and a detention hearing must be

conducted before the expiration of the next judicial day after a petition to declare the minor a dependent child of the juvenile court has been filed.

This bill would require a social worker, when a child is removed from the home, to conduct, within 30 days, an investigation, as specified, in order to identify and locate all grandparents, adult siblings, and other adult relatives of the child, in order to provide, except when that relative's history of family or domestic violence makes notification inappropriate, those persons with specified information, including that the child has been removed from the custody of his or her parents or guardians and an explanation of various options to participate in the care and placement of the child, as specified, and to report to the court at the initial petition hearing regarding that effort. The bill would require the State Department of Social Services to develop the written notice providing that information to relatives.

The bill would also require the Judicial Council to develop a relative information form, as specified. The form would provide information regarding the needs of the child, and would include a provision whereby the relative may request the permission of the court to address the court. The bill would require a social worker to provide that form, on and after January 1, 2011, to the adult relatives identified pursuant to the provision described above. By imposing new duties on social workers, the bill would impose a state-mandated local program.

(2) Existing law authorizes a peace officer to take a minor into temporary custody without a warrant and to deliver that minor to a probation officer under specified circumstances.

This bill would enact provisions similar to those described in paragraph (1) that would be applicable to minors who are taken into temporary custody and delivered to a probation officer. The bill would impose new duties on probation officers, similar to those imposed upon social workers, as described above in paragraph (1), with respect to conducting an investigation to locate adult relatives and providing those relatives with specified information. These provisions would not, however, require probation officers to develop the relative information form or provide it to those relatives. By imposing new duties upon probation officers, this bill would impose a state-mandated local program.

(3) 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. Section 309 of the Welfare and Institutions Code
2 is amended to read:
3 309. (a) Upon delivery to the social worker of a child who has
4 been taken into temporary custody under this article, the social
5 worker shall immediately investigate the circumstances of the child
6 and the facts surrounding the child's being taken into custody and
7 attempt to maintain the child with the child's family through the
8 provision of services. The social worker shall immediately release
9 the child to the custody of the child's parent, guardian, or
10 responsible relative unless one or more of the following conditions
11 exist:
12 (1) The child has no parent, guardian, or responsible relative;
13 or the child's parent, guardian, or responsible relative is not willing
14 to provide care for the child.
15 (2) Continued detention of the child is a matter of immediate
16 and urgent necessity for the protection of the child and there are
17 no reasonable means by which the child can be protected in his or
18 her home or the home of a responsible relative.
19 (3) There is substantial evidence that a parent, guardian, or
20 custodian of the child is likely to flee the jurisdiction of the court.
21 (4) The child has left a placement in which he or she was placed
22 by the juvenile court.
23 (5) The parent or other person having lawful custody of the
24 child voluntarily surrendered physical custody of the child pursuant
25 to Section 1255.7 of the Health and Safety Code and did not
26 reclaim the child within the 14-day period specified in subdivision
27 (e) of that section.
28 (b) In any case in which there is reasonable cause for believing
29 that a child who is under the care of a physician and surgeon or a
30 hospital, clinic, or other medical facility and cannot be immediately
31 moved and is a person described in Section 300, the child shall be

1 deemed to have been taken into temporary custody and delivered
2 to the social worker for the purposes of this chapter while the child
3 is at the office of the physician and surgeon or the medical facility.

4 (c) If the child is not released to his or her parent or guardian,
5 the child shall be deemed detained for purposes of this chapter.

6 (d) (1) If an able and willing relative, as defined in Section 319,
7 or an able and willing nonrelative extended family member, as
8 defined in Section 362.7, is available and requests temporary
9 placement of the child pending the detention hearing, the county
10 welfare department shall initiate an assessment of the relative's or
11 nonrelative extended family member's suitability, which shall
12 include an in-home inspection to assess the safety of the home and
13 the ability of the relative or nonrelative extended family member
14 to care for the child's needs, and a consideration of the results of
15 a criminal records check conducted pursuant to subdivision (a) of
16 Section 16504.5 and a check of allegations of prior child abuse or
17 neglect concerning the relative or nonrelative extended family
18 member and other adults in the home. Upon completion of this
19 assessment, the child may be placed in the assessed home. For
20 purposes of this paragraph, and except for the criminal records
21 check conducted pursuant to subdivision (a) of Section 16504.5,
22 the standards used to determine suitability shall be the same
23 standards set forth in the regulations for the licensing of foster
24 family homes.

25 (2) Immediately following the placement of a child in the home
26 of a relative or a nonrelative extended family member, the county
27 welfare department shall evaluate and approve or deny the home
28 for purposes of AFDC-FC eligibility pursuant to Section 11402.
29 The standards used to evaluate and grant or deny approval of the
30 home of the relative and of the home of a nonrelative extended
31 family member, as described in Section 362.7, shall be the same
32 standards set forth in regulations for the licensing of foster family
33 homes which prescribe standards of safety and sanitation for the
34 physical plant and standards for basic personal care, supervision,
35 and services provided by the caregiver.

36 (3) To the extent allowed by federal law, as a condition of
37 receiving funding under Title IV-E of the federal Social Security
38 Act (42 U.S.C. Sec. 670 et seq.), if a relative or nonrelative
39 extended family member meets all other conditions for approval,
40 except for the receipt of the Federal Bureau of Investigation's

1 criminal history information for the relative or nonrelative extended
2 family member, and other adults in the home, as indicated, the
3 county welfare department may approve the home and document
4 that approval, if the relative or nonrelative extended family
5 member, and each adult in the home, has signed and submitted a
6 statement that he or she has never been convicted of a crime in the
7 United States, other than a traffic infraction as defined in paragraph
8 (1) of subdivision (a) of Section 42001 of the Vehicle Code. If,
9 after the approval has been granted, the department determines
10 that the relative or nonrelative extended family member or other
11 adult in the home has a criminal record, the approval may be
12 terminated.

13 (4) If the criminal records check indicates that the person has
14 been convicted of a crime for which the Director of Social Services
15 cannot grant an exemption under Section 1522 of the Health and
16 Safety Code, the child shall not be placed in the home. If the
17 criminal records check indicates that the person has been convicted
18 of a crime for which the Director of Social Services may grant an
19 exemption under Section 1522 of the Health and Safety Code, the
20 child shall not be placed in the home unless a criminal records
21 exemption has been granted by the county based on substantial
22 and convincing evidence to support a reasonable belief that the
23 person with the criminal conviction is of such good character as
24 to justify the placement and not present a risk of harm to the child.

25 (e) (1) If the child is removed, the social worker shall conduct,
26 within 30 days, an investigation in order to identify and locate all
27 grandparents, adult siblings, and other adult relatives of the child,
28 as defined in paragraph (2) of subdivision (f) of Section 319,
29 including any other adult relatives suggested by the parents. The
30 social worker shall provide to all adult relatives who are located,
31 except when that relative's history of family or domestic violence
32 makes notification inappropriate, within 30 days of removal of the
33 child, written notification and shall also, whenever appropriate,
34 provide oral notification, in person or by telephone, of all the
35 following information:

36 (A) The child has been removed from the custody of his or her
37 parent or parents, or his or her guardians.

38 (B) An explanation of the various options to participate in the
39 care and placement of the child and support for the child's family,
40 including any options that may be lost by failing to respond. The

1 notice shall provide information about providing care for the child
2 while the family receives reunification services with the goal of
3 returning the child to the parent or guardian, how to become a
4 foster family home or approved relative or nonrelative extended
5 family member as defined in Section 362.7, and additional services
6 and support that are available in out-of-home placements. The
7 notice shall also include information regarding the Kin-GAP
8 Program (Article 4.5 (commencing with Section 11360) of Chapter
9 2 of Part 3 of Division 9), the CalWORKs program for approved
10 relative caregivers (Chapter 2 (commencing with Section 11200)
11 of Part 3 of Division 9), adoption, and adoption assistance (Chapter
12 2.1 (commencing with Section 16115) of Part 4 of Division 9), as
13 well as other options for contact with the child, including, but not
14 limited to, visitation. The State Department of Social Services, in
15 consultation with the County Welfare Directors Association and
16 other interested stakeholders, shall develop the written notice.

17 (2) On and after January 1, 2011, the social worker shall also
18 provide the adult relatives notified pursuant to paragraph (1) with
19 a relative information form to provide information to the social
20 worker and the court regarding the needs of the child. The form
21 shall include a provision whereby the relative may request the
22 permission of the court to address the court, if the relative so
23 chooses. The Judicial Council, in consultation with the State
24 Department of Social Services and the County Welfare Directors
25 Association, shall develop the form.

26 (3) The social worker shall use due diligence in investigating
27 the names and locations of the relatives pursuant to paragraph (1),
28 including, but not limited to, asking the child in an age-appropriate
29 manner about relatives important to the child, consistent with the
30 child's best interest, and obtaining information regarding the
31 location of the child's adult relatives. Each county welfare
32 department shall create and make public a procedure by which
33 relatives of a child who has been removed from his or her parents
34 or guardians may identify themselves to the county welfare
35 department and be provided with the notices required by paragraphs
36 (1) and (2).

37 SEC. 2. Section 628 of the Welfare and Institutions Code is
38 amended to read:

39 628. (a) Upon delivery to the probation officer of a minor who
40 has been taken into temporary custody under the provisions of this

1 article, the probation officer shall immediately investigate the
2 circumstances of the minor and the facts surrounding his or her
3 being taken into custody and shall immediately release the minor
4 to the custody of his or her parent, legal guardian, or responsible
5 relative unless it can be demonstrated upon the evidence before
6 the court that continuance in the home is contrary to the minor's
7 welfare and one or more of the following conditions exist:

8 (1) The minor is in need of proper and effective parental care
9 or control and has no parent, legal guardian, or responsible relative;
10 or has no parent, legal guardian, or responsible relative willing to
11 exercise or capable of exercising that care or control; or has no
12 parent, legal guardian, or responsible relative actually exercising
13 that care or control.

14 (2) The minor is destitute or is not provided with the necessities
15 of life or is not provided with a home or suitable place of abode.

16 (3) The minor is provided with a home which is an unfit place
17 for him or her by reason of neglect, cruelty, depravity or physical
18 abuse by either of his or her parents, or by his or her legal guardian
19 or other person in whose custody or care he or she is entrusted.

20 (4) Continued detention of the minor is a matter of immediate
21 and urgent necessity for the protection of the minor or reasonable
22 necessity for the protection of the person or property of another.

23 (5) The minor is likely to flee the jurisdiction of the court.

24 (6) The minor has violated an order of the juvenile court.

25 (7) The minor is physically dangerous to the public because of
26 a mental or physical deficiency, disorder or abnormality.

27 (b) If the probation officer has reason to believe that the minor
28 is at risk of entering foster care placement as defined in paragraphs
29 (1) and (2) of subdivision (d) of Section 727.4, then the probation
30 officer shall, as part of the investigation undertaken pursuant to
31 subdivision (a), make reasonable efforts, as described in paragraph
32 (5) of subdivision (d) of Section 727.4, to prevent or eliminate the
33 need for removal of the minor from his or her home.

34 (c) In any case in which there is reasonable cause for believing
35 that a minor who is under the care of a physician or surgeon or a
36 hospital, clinic, or other medical facility and cannot be immediately
37 moved is a person described in subdivision (d) of Section 300, the
38 minor shall be deemed to have been taken into temporary custody
39 and delivered to the probation officer for the purposes of this

chapter while he or she is at the office of the physician or surgeon or that medical facility.

~~(d) (1) If the minor is detained because continuance in the home is contrary to the minor's welfare and reasonable efforts have been made to prevent or eliminate the need for removal, the probation officer shall conduct, within 30 days, an investigation in order to identify and locate all grandparents, adult siblings, and other adult relatives of the child, as defined in paragraph (2) of subdivision (f) of Section 319, including any other adult relatives suggested by the parents. The probation officer shall provide to~~

(d) (1) It is the intent of the Legislature that this subdivision shall comply with paragraph (29) of subsection (a) of Section 671 of Title 42 of the United States Code as added by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351). It is further the intent of the Legislature that the identification and notification of relatives shall be made as early as possible after the removal of a youth who is at risk of entering foster care placement.

(2) If the minor is detained and the probation officer has reason to believe that the minor is at risk of entering foster care placement, as defined in paragraphs (1) and (2) of subdivision (d) of Section 727.4, then the probation officer shall conduct, within 30 days, an investigation in order to identify and locate all grandparents, adult siblings, and other relatives of the child, as defined in paragraph (2) of subdivision (f) of Section 319, including any other adult relatives suggested by the parents. The probation officer shall provide to all adult relatives who are located, except when that relative's history of family or domestic violence makes notification inappropriate, within 30 days of the date on which the child is detained, written notification and shall also, whenever appropriate, provide oral notification, in person or by telephone, of all the following information:

(A) The child has been removed from the custody of his or her parent or parents, or his or her guardians.

(B) An explanation of the various options to participate in the care and placement of the child and support for the child's family, including any options that may be lost by failing to respond. The notice shall provide information about providing care for the child, how to become a foster family home or approved relative or nonrelative extended family member as defined in Section 362.7,

1 and additional services and support that are available in
2 out-of-home placements. The notice shall also include information
3 regarding the Kin-GAP Program (Article 4.5 (commencing with
4 Section 11360) of Chapter 2 of Part 3 of Division 9), the
5 CalWORKs program for approved relative caregivers (Chapter 2
6 (commencing with Section 11200) of Part 3 of Division 9),
7 adoption and adoption assistance (Chapter 2.1 (commencing with
8 Section 16115) of Part 4 of Division 9), as well as other options
9 for contact with the child, including, but not limited to, visitation.
10 When oral notification is provided, the probation officer is not
11 required to provide detailed information about the various options
12 to help with the care and placement of the child.

13 (2)

14 (3) The probation officer shall use *due* diligence in investigating
15 the names and locations of the relatives pursuant to paragraph (1)
16 (2), including, but not limited to, asking the child in an
17 age-appropriate manner about relatives important to the child,
18 consistent with the child's best interest, and obtaining information
19 regarding the location of the child's adult relatives.

20 (4) *To the extent allowed by federal law as a condition of*
21 *receiving funding under Title IV-E of the federal Social Security*
22 *Act (42 U.S.C. Sec. 670 et seq.), if the probation officer did not*
23 *conduct the identification and notification of relatives, as required*
24 *in paragraph (2), but the court orders foster care placement, the*
25 *probation officer shall conduct the investigation to find and notify*
26 *relatives within 30 days of the placement order. Nothing in this*
27 *section shall be construed to delay foster care placement for an*
28 *individual child.*

29 SEC. 3. If the Commission on State Mandates determines that
30 this act contains costs mandated by the state, reimbursement to
31 local agencies and school districts for those costs shall be made
32 pursuant to Part 7 (commencing with Section 17500) of Division
33 4 of Title 2 of the Government Code.