

AMENDED IN ASSEMBLY JULY 6, 2009

AMENDED IN SENATE MAY 28, 2009

AMENDED IN SENATE APRIL 27, 2009

AMENDED IN SENATE APRIL 14, 2009

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 774

Introduced by Senator Ashburn

February 27, 2009

An act to amend Section 16501 of the Welfare and Institutions Code, relating to children's services.

LEGISLATIVE COUNSEL'S DIGEST

SB 774, as amended, Ashburn. Social workers: criminal history.

Existing law requires the counties, with the assistance of the State Department of Social Services, to provide child welfare services, including emergency response, foster care placement, adoption services, and family maintenance and reunification. Under existing law, counties may secure from the Department of Justice a criminal record for all county welfare department employees who have frequent and routine contact with children, if the employees provide services to children who are alleged victims of abuse, neglect, or exploitation. If the employee has been convicted of a crime, other than a minor traffic violation, the county welfare director must determine whether there is substantial and convincing evidence to support a reasonable belief that the employee is of good character. Existing law provides specified crimes for which the employee must be suspended from duties involving frequent and routine contact with children.

This bill would require a county, before ~~hiring~~ *making an offer of employment to* an applicant for, or transferring a current employee to, a position with frequent and routine contact with children, if the employee will provide services to children who are alleged victims of abuse, neglect, or exploitation, to secure from the Department of Justice a criminal record to determine if the person has ever been convicted of specified crimes. The bill would prohibit the county from employing the person under prescribed circumstances. The bill would allow the county to require the person to pay any fees charged by the Department of Justice for the processing of the criminal history and an additional fee in an amount not more than the amount sufficient to cover the costs to the county of administering the criminal record checks.

This bill would exclude a person who has obtained a certificate of rehabilitation, *or with respect to whom the accusation or information has been dismissed*, from being considered convicted for purposes of the bill.

This bill would also permit a county to obtain fingerprints from specified current employees for the purpose of obtaining a criminal record from the Department of Justice. The bill would require the county to terminate or suspend from any duties involving frequent and routine contact with children an employee whose criminal record includes conviction for specified crimes.

Because this bill would require the counties to take additional steps to hire certain employees, it would impose 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.

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 16501 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 16501. (a) As used in this chapter, “child welfare services”
- 4 means public social services that are directed toward the
- 5 accomplishment of any or all the following purposes: protecting

1 and promoting the welfare of all children, including handicapped,
2 homeless, dependent, or neglected children; preventing or
3 remedying, or assisting in the solution of problems that may result
4 in, the neglect, abuse, exploitation, or delinquency of children;
5 preventing the unnecessary separation of children from their
6 families by identifying family problems, assisting families in
7 resolving their problems and preventing breakup of the family
8 where the prevention of child removal is desirable and possible;
9 restoring to their families children who have been removed, by
10 the provision of services to the child and the families; identifying
11 children to be placed in suitable adoptive homes, in cases where
12 restoration to the biological family is not possible or appropriate;
13 and assuring adequate care of children away from their homes, in
14 cases where the child cannot be returned home or cannot be placed
15 for adoption.

16 “Child welfare services” also means services provided on behalf
17 of children alleged to be the victims of child abuse, neglect, or
18 exploitation. The child welfare services provided on behalf of each
19 child represent a continuum of services, including emergency
20 response services, family preservation services, family maintenance
21 services, family reunification services, and permanent placement
22 services. The individual child’s case plan is the guiding principle
23 in the provision of these services. The case plan shall be developed
24 within 30 days of the initial removal of the child or of the in-person
25 response required under subdivision (f) of Section 16501 if the
26 child has not been removed from his or her home, or by the date
27 of the jurisdictional hearing pursuant to Section 356, whichever
28 comes first.

29 (1) Child welfare services may include, but are not limited to,
30 a range of service-funded activities, including case management,
31 counseling, emergency shelter care, emergency in-home caretakers,
32 temporary in-home caretakers, respite care, therapeutic day
33 services, teaching and demonstrating homemakers, parenting
34 training, substance abuse testing, and transportation. These
35 service-funded activities shall be available to children and their
36 families in all phases of the child welfare program in accordance
37 with the child’s case plan and departmental regulations. Funding
38 for services is limited to the amount appropriated in the annual
39 Budget Act and other available county funds.

1 (2) Service-funded activities to be provided may be determined
2 by each county, based upon individual child and family needs as
3 reflected in the service plan.

4 (3) As used in this chapter, “emergency shelter care” means
5 emergency shelter provided to children who have been removed
6 pursuant to Section 300 from their parent or parents or their
7 guardian or guardians. The department may establish, by
8 regulation, the time periods for which emergency shelter care shall
9 be funded. For the purposes of this paragraph, “emergency shelter
10 care” may include transitional shelter care facilities as defined in
11 paragraph (11) of subdivision (a) of Section 1502 of the Health
12 and Safety Code.

13 (b) As used in this chapter, “respite care” means temporary care
14 for periods not to exceed 72 hours. This care may be provided to
15 the child’s parents or guardians. This care shall not be limited by
16 regulation to care over 24 hours. These services shall not be
17 provided for the purpose of routine, ongoing child care.

18 (c) The county shall provide child welfare services, as needed,
19 pursuant to an approved service plan, and in accordance with
20 regulations promulgated, in consultation with the counties, by the
21 department. Counties may contract for service-funded activities
22 as defined in paragraph (1) of subdivision (a). Each county shall
23 use available private child welfare resources prior to developing
24 new county-operated resources when the private child welfare
25 resources are of at least equal quality and lesser or equal cost as
26 compared with county-operated resources. Counties shall not
27 contract for needs assessment, client eligibility determination, or
28 any other activity as specified by regulations of the State
29 Department of Social Services, except as specifically authorized
30 in Section 16100.

31 (d) Nothing in this chapter shall be construed to affect duties
32 that are delegated to probation officers pursuant to Sections 601
33 and 654.

34 (e) A county may utilize volunteer individuals to supplement
35 professional child welfare services by providing ancillary support
36 services in accordance with regulations adopted by the State
37 Department of Social Services.

38 (f) As used in this chapter, emergency response services consist
39 of a response system providing in-person response, 24 hours a day,
40 seven days a week, to reports of abuse, neglect, or exploitation, as

1 required by Article 2.5 (commencing with Section 11164) of
2 Chapter 2 of Title 1 of Part 4 of the Penal Code, for the purpose
3 of investigation pursuant to Section 11166 of the Penal Code and
4 to determine the necessity for providing initial intake services and
5 crisis intervention to maintain the child safely in his or her own
6 home or to protect the safety of the child. County welfare
7 departments shall respond to a report of imminent danger to a child
8 immediately and to all other reports within 10 calendar days. An
9 in-person response is not required when the county welfare
10 department, based upon an evaluation of risk, determines that an
11 in-person response is not appropriate. This evaluation includes
12 collateral, contacts, a review of previous referrals, and other
13 relevant information, as indicated.

14 (g) As used in this chapter, “family maintenance services” means
15 activities designed to provide in-home protective services to
16 prevent or remedy neglect, abuse, or exploitation, for the purposes
17 of preventing separation of children from their families.

18 (h) As used in this chapter, “family reunification services” means
19 activities designed to provide time-limited foster care services to
20 prevent or remedy neglect, abuse, or exploitation, when the child
21 cannot safely remain at home, and needs temporary foster care,
22 while services are provided to reunite the family.

23 (i) As used in this chapter, “permanent placement services”
24 means activities designed to provide an alternate permanent family
25 structure for children who, because of abuse, neglect, or
26 exploitation, cannot safely remain at home and who are unlikely
27 to ever return home. These services shall be provided on behalf
28 of children for whom there has been a judicial determination of a
29 permanent plan for adoption, legal guardianship, or long-term
30 foster care.

31 (j) As used in this chapter, “family preservation services” include
32 those services specified in Section 16500.5 to avoid or limit
33 out-of-home placement of children, and may include those services
34 specified in that section to place children in the least restrictive
35 environment possible.

36 (k) (1) (A) An applicant applying for, or an employee
37 transferring to, a position with the county welfare department who
38 will have frequent and routine contact with children, if the
39 prospective employee will provide services to children who are
40 alleged victims of abuse, neglect, or exploitation, he or she shall

1 sign a declaration under penalty of perjury regarding prior criminal
2 conviction and shall provide a set of fingerprints to the county
3 welfare director.

4 (B) ~~The~~ *If the county determines that a prospective employee*
5 *specified in subparagraph (A) is otherwise qualified for the position*
6 *applied for and the county is likely to make an offer of employment,*
7 *prior to making the offer, the county welfare director shall secure*
8 *from the Department of Justice a criminal record to determine*
9 *whether the prospective employee specified in subparagraph (A)*
10 *has ever been convicted of a crime, whether state or federal, other*
11 *than a minor traffic violation. The Department of Justice shall*
12 *provide a state and federal level response to the county pursuant*
13 *to subdivision (p) of Section 11105 of the Penal Code. The*
14 *Department of Justice shall furnish the information to the county*
15 *and shall also send a copy of the information to the applicant. The*
16 *county shall request from the Department of Justice subsequent*
17 *arrest notification service, as provided pursuant to Section 11105.2*
18 *of the Penal Code, for persons described in subparagraph (A) that*
19 *are hired by the county for a position that includes frequent and*
20 *routine contact with children.*

21 (C) ~~If it is found that a person to whom subparagraph (A) (B)~~
22 ~~applies has been convicted of a crime, other than a minor traffic~~
23 ~~violation, the county welfare director shall determine whether the~~
24 ~~crime is substantially related to the qualifications, functions, or~~
25 ~~duties of the position and if so, whether there is substantial and~~
26 ~~convincing evidence to support a reasonable belief that the person~~
27 ~~is of good character so as to justify frequent and routine contact~~
28 ~~with children. If this finding is not made—In making this~~
29 ~~determination, the county welfare director may consider factors,~~
30 ~~including (i) the nature and seriousness of the conduct or crime~~
31 ~~under consideration and its relationship to the person's~~
32 ~~employment duties and responsibilities; (ii) activities since~~
33 ~~conviction, including employment or participation in therapy or~~
34 ~~education, that would indicate changed behavior; (iii) the time~~
35 ~~that has elapsed since the commission of the conduct or offense~~
36 ~~and the number of offenses; (iv) the extent to which the person has~~
37 ~~complied with any terms of parole, probation, restitution, or any~~
38 ~~other sanction lawfully imposed against the person; (v) any~~
39 ~~rehabilitation evidence, including character references, submitted~~
40 ~~by the person; (vi) employment history and current employer~~

1 *recommendations; and (vii) circumstances surrounding the*
2 *commission of the offense that would demonstrate the unlikelihood*
3 *of repetition. The applicant shall provide evidence to the welfare*
4 *director for consideration. If it is not found that the person is of*
5 *good character so as to justify frequent and routine contact with*
6 *children, the county is prohibited from hiring that person.*

7 ~~(D) The county is prohibited from hiring a person to whom~~
8 ~~subparagraph (A) applies if the person has been convicted of an~~
9 ~~offense specified in Section 245, 273.5, or 290 of the Penal Code,~~
10 ~~a conviction for child abuse pursuant to Section 273a, 273ab, or~~
11 ~~273d of the Penal Code, or any sex offense specified as being~~
12 ~~perpetrated against a minor.~~

13 (D) *The county is prohibited from hiring a person to whom*
14 *subparagraph (B) applies if the person has been convicted of a*
15 *sex offense against a minor, or has been convicted of a felony*
16 *offense specified in Section 220, 243.5, 245, 264.1, 273d, 273.5,*
17 *288, 289, or 290 of the Penal Code, or in subdivision (a) of Section*
18 *273a of, or subdivision (a) or (b) of Section 368 of, the Penal Code,*
19 *or has been convicted of an offense specified in subdivision (c) of*
20 *Section 667.5 of the Penal Code, or a conviction for child abuse*
21 *pursuant to Section 273a, 273ab, or 273d of the Penal Code.*

22 (E) *Notwithstanding subparagraph (D), the county welfare*
23 *director may grant an exemption if the prospective employee, who*
24 *was convicted of a crime specified in subparagraph (D) has*
25 *received a certificate of rehabilitation pursuant to Chapter 3.5*
26 *(commencing with Section 4852.01) of Title 6 of Part 3 of the*
27 *Penal Code, or if the accusation or information against the person*
28 *has been dismissed and he or she has been released from all*
29 *disabilities and penalties resulting from the offense pursuant to*
30 *Section 1203.4 of the Penal Code. In that case, the county welfare*
31 *director may give the prospective employee an opportunity to*
32 *explain the conviction and shall consider that explanation in the*
33 *evaluation of the criminal conviction record required pursuant to*
34 *subparagraph (C).*

35 (F) *If no criminal record information has been recorded, the*
36 *county welfare director shall cause a statement of that fact to be*
37 *included in that person's personnel file.*

38 (2) *For purposes of this subdivision, a conviction means a plea*
39 *or verdict of guilty or a conviction following a plea of nolo*
40 *contendere. An action that the county welfare director is permitted*

1 to take following the establishment of a conviction may be taken
2 when the time for appeal has elapsed, the judgment of conviction
3 has been affirmed on appeal, or when an order granting probation
4 is made suspending the imposition of sentence, notwithstanding
5 a subsequent order pursuant to Sections 1203.4 and 1203.4a of the
6 Penal Code permitting the person to withdraw his or her plea of
7 guilty and to enter a plea of not guilty, or setting aside the verdict
8 of guilty, or dismissing the accusation, information, or indictment.
9 For purposes of this subdivision, the record of a conviction, or a
10 copy thereof certified by the clerk of the court or by a judge of the
11 court in which the conviction occurred, shall be conclusive
12 evidence of the conviction.

13 (3) The county may require a person to whom subparagraph
14 ~~(A)~~ (B) of paragraph (1) applies to pay any fees charged by the
15 Department of Justice and an additional fee in an amount that shall
16 not exceed the costs to the county of administering this subdivision.

17 ~~(4) A person to whom subparagraph (A) of paragraph (1) applies~~
18 ~~who is denied a position pursuant to paragraph (1) shall receive a~~
19 ~~copy of the criminal record upon written request.~~

20 (5)
21 (4) A county may require a current employee who has frequent
22 and routine contact with children, if the employee provides services
23 to children who are alleged victims of abuse, neglect, or
24 exploitation, to provide fingerprints for the purpose of obtaining
25 a criminal record from the Department of Justice. If the criminal
26 record returns a conviction for a crime, other than a minor traffic
27 violation, the county welfare director shall make the determination
28 required in subparagraph (C) of paragraph (1) to determine the
29 employee's employment and job assignment status. If the criminal
30 record returns a conviction for any of the offenses listed in
31 subparagraph (D) of paragraph (1), the employee shall, subject to
32 subparagraph (E) of paragraph (1), either be terminated or
33 suspended from any duties involving frequent and routine contact
34 with children.

35 SEC. 2. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 a local agency or school district has the authority to levy service
38 charges, fees, or assessments sufficient to pay for the program or

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

O