

AMENDED IN SENATE MARCH 31, 2016

**SENATE BILL**

**No. 942**

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**Introduced by Senator Liu**

February 3, 2016

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An act to amend Sections 319 and 361.4 of the Welfare and Institutions Code, relating to dependency proceedings.

LEGISLATIVE COUNSEL'S DIGEST

SB 942, as amended, Liu. Dependency proceedings: relative caregivers.

Existing law establishes the jurisdiction of the juvenile court, which may adjudge a child to be a dependent of the court under certain circumstances, including when the child suffered, or there is a substantial risk that the child will suffer, serious physical harm, or a parent fails to provide the child with adequate food, clothing, shelter, or medical treatment. Existing law establishes the grounds for removal of a dependent child from the custody of his or her parents or guardian, and establishes procedures to determine placement of a dependent child. Existing law prescribes various hearings, including specified review hearings, and other procedures for these purposes. Existing law requires a social worker to conduct specified assessments for purposes of placement.

This bill would establish additional procedures for the temporary placement of a child with an able and willing relative under circumstances in which the child has not yet been placed with a relative prior to his or her initial hearing. The bill would require a social worker to conduct an assessment under those ~~provisions, and~~ *provisions, as specified. The bill would* establish procedures to hold a hearing for the

consideration of ~~that assessment and temporary placement.~~ *the recommendations of the social worker based on the assessment.*

~~Existing law requires, whenever a child may be placed in the home of a relative, or the home of any prospective guardian or other person who is not a licensed or certified foster parent, the court or social worker placing the child to cause a state-level criminal records check to be conducted by an appropriate government agency through the California Law Enforcement Telecommunications System.~~

~~This bill would require that criminal records check to be conducted within a specified timeframe. The bill would require various hearings if the county fails to meet those timeframes, and would authorize placement under circumstances in which the county is found to have abused its discretion, as specified.~~

*Under existing law, if a child is proposed to be placed in the home of a relative, or the home of any prospective guardian or other person who is not a licensed or certified foster parent, the court or social worker placing the child is required to have a state-level criminal records check conducted by an appropriate government agency through the California Law Enforcement Telecommunications System.* Existing law authorizes a county to issue a criminal records exemption ~~from those criminal records check requirements for a crime for which the relative, prospective guardian, or other person has been convicted only if that county has been granted permission by the Director of Social Services to issue criminal records exemptions.~~

~~In~~

~~This bill would require a county that has issued seeking to issue a criminal records exemption, this bill would require the county exemption to actively assist a the relative, prospective guardian, or other person in locating and obtaining any documents required for the criminal records exemption. The bill would also require the county to complete the assessment process, including any exemptions and waivers, within a specified timeframe. The bill would authorize the court to conduct a hearing if the assessment process is not complete, as specified, to determine if the county has abused its discretion.~~

~~By imposing these additional duties on county welfare agencies pursuant to various provisions of this bill, agencies, the bill 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. The Legislature finds and declares that placement  
2 with able and willing relatives at the earliest point in time is in the  
3 best interest of a child in the dependency system. Along those  
4 lines, research has shown that a child in the dependency system  
5 tends to be more emotionally well off when placed with his or her  
6 relatives, and reunification with his or her parents is routinely  
7 enhanced by placement with those relatives.

8 SEC. 2. Section 319 of the Welfare and Institutions Code is  
9 amended to read:

10 319. (a) At the initial petition hearing, the court shall examine  
11 the child's parents, guardians, or other persons having relevant  
12 knowledge and hear the relevant evidence as the child, the child's  
13 parents or guardians, the petitioner, or their counsel desires to  
14 present. The court may examine the child, as provided in Section  
15 350.

16 (b) The social worker shall report to the court on the reasons  
17 why the child has been removed from the parent's physical custody,  
18 the need, if any, for continued detention, the available services  
19 and the referral methods to those services that could facilitate the  
20 return of the child to the custody of the child's parents or guardians,  
21 and whether there are any relatives who are able and willing to  
22 take temporary physical custody of the child. The court shall order  
23 the release of the child from custody unless a prima facie showing  
24 has been made that the child comes within Section 300, the court  
25 finds that continuance in the parent's or guardian's home is  
26 contrary to the child's welfare, and any of the following  
27 circumstances exist:

28 (1) There is a substantial danger to the physical health of the  
29 child or the child is suffering severe emotional damage, and there  
30 are no reasonable means by which the child's physical or emotional  
31 health may be protected without removing the child from the  
32 parent's or guardian's physical custody.

1 (2) There is substantial evidence that a parent, guardian, or  
2 custodian of the child is likely to flee the jurisdiction of the court.

3 (3) The child has left a placement in which he or she was placed  
4 by the juvenile court.

5 (4) The child indicates an unwillingness to return home, if the  
6 child has been physically or sexually abused by a person residing  
7 in the home.

8 (c) If the matter is continued pursuant to Section 322 or for any  
9 other reason, the court shall find that the continuance of the child  
10 in the parent's or guardian's home is contrary to the child's welfare  
11 at the initial petition hearing or order the release of the child from  
12 custody.

13 (d) (1) The court shall also make a determination on the record,  
14 referencing the social worker's report or other evidence relied  
15 upon, as to whether reasonable efforts were made to prevent or  
16 eliminate the need for removal of the child from his or her home,  
17 pursuant to subdivision (b) of Section 306, and whether there are  
18 available services that would prevent the need for further detention.  
19 Services to be considered for purposes of making this determination  
20 are case management, counseling, emergency shelter care,  
21 emergency in-home caretakers, out-of-home respite care, teaching  
22 and demonstrating homemakers, parenting training, transportation,  
23 and any other child welfare services authorized by the State  
24 Department of Social Services pursuant to Chapter 5 (commencing  
25 with Section 16500) of Part 4 of Division 9. The court shall also  
26 review whether the social worker has considered whether a referral  
27 to public assistance services pursuant to Chapter 2 (commencing  
28 with Section 11200) and Chapter 7 (commencing with Section  
29 14000) of Part 3, Chapter 1 (commencing with Section 17000) of  
30 Part 5, and Chapter 10 (commencing with Section 18900) of Part  
31 6 of Division 9 would have eliminated the need to take temporary  
32 custody of the child or would prevent the need for further detention.

33 (2) If the child can be returned to the custody of his or her parent  
34 or guardian through the provision of those services, the court shall  
35 place the child with his or her parent or guardian and order that  
36 the services shall be provided. If the child cannot be returned to  
37 the physical custody of his or her parent or guardian, the court  
38 shall determine if there is a relative who is able and willing to care  
39 for the child, and has been assessed pursuant to paragraph (1) of  
40 subdivision (d) of Section 309.

1 (3) In order to preserve the bond between the child and the  
2 parent and to facilitate family reunification, the court shall consider  
3 whether the child can be returned to the custody of his or her parent  
4 who is enrolled in a certified substance abuse treatment facility  
5 that allows a dependent child to reside with his or her parent. The  
6 fact that the parent is enrolled in a certified substance abuse  
7 treatment facility that allows a dependent child to reside with his  
8 or her parent shall not be, for that reason alone, prima facie  
9 evidence of substantial danger. The court shall specify the factual  
10 basis for its conclusion that the return of the child to the custody  
11 of his or her parent would pose a substantial danger or would not  
12 pose a substantial danger to the physical health, safety, protection,  
13 or physical or emotional well-being of the child.

14 (e) If a court orders a child detained, the court shall state the  
15 facts on which the decision is based, specify why the initial removal  
16 was necessary, reference the social worker's report or other  
17 evidence relied upon to make its determination whether  
18 continuance in the home of the parent or legal guardian is contrary  
19 to the child's welfare, order temporary placement and care of the  
20 child to be vested with the county child welfare department pending  
21 the hearing held pursuant to Section 355 or further order of the  
22 court, and order services to be provided as soon as possible to  
23 reunify the child and his or her family if appropriate.

24 (f) (1) If the child is not released from custody, the court may  
25 order that the child shall be placed in the assessed home of a  
26 relative, in an emergency shelter or other suitable licensed place,  
27 in a place exempt from licensure designated by the juvenile court,  
28 or in the assessed home of a nonrelative extended family member  
29 as defined in Section 362.7 for a period not to exceed 15 judicial  
30 days. A runaway and homeless youth shelter licensed by the State  
31 Department of Social Services pursuant to Section 1502.35 of the  
32 Health and Safety Code shall not be a placement option pursuant  
33 to this section.

34 (2) As used in this section, "relative" means an adult who is  
35 related to the child by blood, adoption, or affinity within the fifth  
36 degree of kinship, including stepparents, stepsiblings, and all  
37 relatives whose status is preceded by the words "great,"  
38 "great-great," or "grand," or the spouse of any of these persons,  
39 even if the marriage was terminated by death or dissolution.  
40 However, only the following relatives shall be given preferential

1 consideration for placement of the child: an adult who is a  
2 grandparent, aunt, uncle, or sibling of the child.

3 (3) The court shall consider the recommendations of the social  
4 worker based on the assessment pursuant to paragraph (1) of  
5 subdivision (d) of Section 309 of the relative's home, including  
6 the results of a criminal records check and prior child abuse  
7 allegations, if any, prior to ordering that the child be placed with  
8 a relative. The court shall order the parent to disclose to the social  
9 worker the names, residences, and any known identifying  
10 information of any maternal or paternal relatives of the child. The  
11 social worker shall initiate the assessment pursuant to Section  
12 361.3 of any relative to be considered for continuing placement.

13 (4) (A) If the child is not placed with a relative at the time of  
14 the initial hearing and an able and willing relative is available and  
15 requests temporary placement of the child, the court shall order  
16 the social worker to conduct an assessment pursuant to paragraph  
17 (1) of subdivision (d) of Section 309. Within seven calendar days,  
18 *except as provided in subparagraph (B)*, the social worker shall  
19 provide the results *or the status* of the ~~assessment~~ *assessment*,  
20 *which shall include an in-home inspection to assess the safety of*  
21 *the home and the ability of the relative to care for the child's needs,*  
22 *and a consideration of the results of a criminal records check*  
23 *conducted through the California Law Enforcement*  
24 *Telecommunications System (CLETS) pursuant to Section 16504.5*  
25 *and a check of the Child Abuse Central Index (CACI) pursuant to*  
26 *subdivision (a) of Section 11170 of the Penal Code*, to the court,  
27 the parent or guardian, the child's attorney, and the child, if the  
28 child is 10 years of age or older. The child or his or her parent or  
29 guardian may request a hearing to consider the recommendations  
30 of the social worker based on the assessment. The court shall hold  
31 a hearing not later than 10 court days after a request is made  
32 pursuant to this paragraph. Consistent with the Legislature's intent  
33 that a child be placed immediately with a responsible relative, this  
34 paragraph shall not be construed to limit the social worker's  
35 authority to place a child in the home of an appropriate relative or  
36 nonrelative extended family member pending receipt of the results  
37 of the assessment or the hearing.

38 (B) *The period of seven calendar days described in*  
39 *subparagraph (A) applies to a social worker providing the results*  
40 *or the status of the assessment in response to a maximum of two*

1 *requests made by relatives for temporary placement of the child.*  
2 *The period of seven calendar days does not apply to a response*  
3 *by a social worker to an additional request made by another*  
4 *relative.*

5 (g) (1) At the initial hearing upon the petition filed in  
6 accordance with subdivision (c) of Rule 5.520 of the California  
7 Rules of Court or anytime thereafter up until the time that the  
8 minor is adjudged a dependent child of the court or a finding is  
9 made dismissing the petition, the court may temporarily limit the  
10 right of the parent or guardian to make educational or  
11 developmental services decisions for the child and temporarily  
12 appoint a responsible adult to make educational or developmental  
13 services decisions for the child if all of the following conditions  
14 are found:

15 (A) The parent or guardian is unavailable, unable, or unwilling  
16 to exercise educational or developmental services rights for the  
17 child.

18 (B) The county placing agency has made diligent efforts to  
19 locate and secure the participation of the parent or guardian in  
20 educational or developmental services decisionmaking.

21 (C) The child's educational and developmental services needs  
22 cannot be met without the temporary appointment of a responsible  
23 adult.

24 (2) If the court limits the parent's educational rights under this  
25 subdivision, the court shall determine whether there is a responsible  
26 adult who is a relative, nonrelative extended family member, or  
27 other adult known to the child and who is available and willing to  
28 serve as the child's educational representative before appointing  
29 an educational representative or surrogate who is not known to the  
30 child.

31 (3) If the court cannot identify a responsible adult to make  
32 educational decisions for the child and the appointment of a  
33 surrogate parent, as defined in subdivision (a) of Section 56050  
34 of the Education Code, is not warranted, the court may, with the  
35 input of any interested person, make educational decisions for the  
36 child. If the child is receiving services from a regional center, the  
37 provision of any developmental services related to the court's  
38 decision shall be consistent with the child's individual program  
39 plan and pursuant to the provisions of the Lanterman  
40 Developmental Disabilities Services Act (Division 4.5

1 (commencing with Section 4500)). If the court cannot identify a  
2 responsible adult to make developmental services decisions for  
3 the child, the court may, with the input of any interested person,  
4 make developmental services decisions for the child. If the court  
5 makes educational or developmental services decisions for the  
6 child, the court shall also issue appropriate orders to ensure that  
7 every effort is made to identify a responsible adult to make future  
8 educational or developmental services decisions for the child.

9 (4) A temporary appointment of a responsible adult and  
10 temporary limitation on the right of the parent or guardian to make  
11 educational or developmental services decisions for the child shall  
12 be specifically addressed in the court order. An order made under  
13 this section shall expire at the conclusion of the hearing held  
14 pursuant to Section 361 or upon dismissal of the petition. Upon  
15 the entering of disposition orders, additional needed limitation on  
16 the parent's or guardian's educational or developmental services  
17 rights shall be addressed pursuant to Section 361.

18 (5) This section does not remove the obligation to appoint  
19 surrogate parents for students with disabilities who are without  
20 parental representation in special education procedures as required  
21 by state and federal law, including Section 1415(b)(2) of Title 20  
22 of the United States Code, Section 56050 of the Education Code,  
23 Section 7579.5 of the Government Code, and Rule 5.650 of the  
24 California Rules of Court.

25 (6) If the court appoints a developmental services decisionmaker  
26 pursuant to this section, he or she shall have the authority to access  
27 the child's information and records pursuant to subdivision (u) of  
28 Section 4514 and subdivision (y) of Section 5328, and to act on  
29 the child's behalf for the purposes of the individual program plan  
30 process pursuant to Sections 4646, 4646.5, and 4648 and the fair  
31 hearing process pursuant to Chapter 7 (commencing with Section  
32 4700), and as set forth in the court order.

33 SEC. 3. Section 361.4 of the Welfare and Institutions Code is  
34 amended to read:

35 361.4. (a) Prior to placing a child in the home of a relative, or  
36 the home of any prospective guardian or other person who is not  
37 a licensed or certified foster parent, the county social worker shall  
38 visit the home to ascertain the appropriateness of the placement.

39 (b) (1) Whenever a child may be placed in the home of a  
40 relative, or the home of any prospective guardian or other person

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

27 (2) An identification card from a foreign consulate or foreign  
28 passport shall be considered a valid form of identification for  
29 conducting a criminal records check and fingerprint clearance  
30 check under this subdivision and under subdivision (c).

31 (c) Whenever a child may be placed in the home of a relative,  
32 or a prospective guardian or other person who is not a licensed or  
33 certified foster parent, the county social worker shall cause a check  
34 of the Child Abuse Central Index pursuant to subdivision (a) of  
35 Section 11170 of the Penal Code to be requested from the  
36 Department of Justice. The Child Abuse Central Index check shall  
37 be conducted on all persons over 18 years of age living in the  
38 home. For any application received on or after January 1, 2008, if  
39 any person in the household is 18 years of age or older and has  
40 lived in another state in the preceding five years, the county social

1 worker shall check the other state's child abuse and neglect registry  
2 to the extent required by federal law.

3 (d) (1) If the results of the California and federal criminal  
4 records check indicates that the person has no criminal record, the  
5 county social worker and court may consider the home of the  
6 relative, prospective guardian, or other person who is not a licensed  
7 or 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 the Director of Social Services  
10 cannot grant an exemption for under Section 1522 of the Health  
11 and Safety Code, the child shall not be placed in the home. If the  
12 criminal records check indicates that the person has been convicted  
13 of a crime that the Director of Social Services may grant an  
14 exemption for under Section 1522 of the Health and Safety Code,  
15 the child shall not be placed in the home unless a criminal records  
16 exemption has been granted by the county, based on substantial  
17 and convincing evidence to support a reasonable belief that the  
18 person with the criminal conviction is of such good character as  
19 to justify the placement and not present a risk of harm to the child  
20 pursuant to paragraph (3).

21 (3) (A) A county may issue a criminal records exemption only  
22 if that county has been granted permission by the Director of Social  
23 Services to issue criminal records exemptions. The county may  
24 file a request with the Director of Social Services seeking  
25 permission for the county to establish a procedure to evaluate and  
26 grant appropriate individual criminal records exemptions for  
27 persons described in subdivision (b). The director shall grant or  
28 deny the county's request within 14 days of receipt. The county  
29 shall evaluate individual criminal records in accordance with the  
30 standards and limitations set forth in paragraph (1) of subdivision  
31 (g) of Section 1522 of the Health and Safety Code, and shall not  
32 place a child in the home of a person who is ineligible for an  
33 exemption under that provision. The county shall, to the extent  
34 possible, actively assist the person to locate and obtain any  
35 documents required for the criminal records exemption, including  
36 having a social worker contact any other government entity directly  
37 to obtain any required arrest reports or court dispositions.

38 (B) The department shall monitor county implementation of the  
39 authority to grant an exemption under this paragraph to ensure that  
40 the county evaluates individual criminal records and allows or

1 disallows placements according to the standards set forth in  
2 paragraph (1) of subdivision (g) of Section 1522 of the Health and  
3 Safety Code.

4 (C) If a court orders the county to assess a person described in  
5 subdivision (a), the county shall complete the assessment process,  
6 including any exemptions and waivers, within 30 calendar days.  
7 If the process is not complete within 30 calendar days of the court  
8 order, the court may set an order to show cause hearing. ~~The denial  
9 of an exemption or waiver due to the failure of the county to obtain  
10 necessary governmental documents shall not be considered  
11 completion of the assessment process. Sixty calendar days after  
12 the court order to assess the person, the court may conduct a  
13 hearing to consider granting the exemption or waiver, and the court  
14 may order the child to be placed with the person. If *the assessment  
15 process is not complete*, an exemption or waiver is denied, and *or*  
16 any administrative process is not complete within 60 calendar days  
17 of the court ordering the county to conduct the assessment, the  
18 court may conduct a hearing to determine if the county has abused  
19 its discretion. ~~At the end of that hearing, the court may order the  
20 child to be placed with the person if it finds that the county abused  
21 its discretion, the placement is appropriate, and the placement is  
22 in the best interest of the child.~~~~

23 (4) The department shall conduct an evaluation of the  
24 implementation of paragraph (3) through random sampling of  
25 county exemption decisions.

26 (5) The State Department of Social Services shall not evaluate  
27 or grant criminal records exemption requests for persons described  
28 in subdivision (b), unless the exemption request is made by an  
29 Indian tribe pursuant to subdivision (f).

30 (6) If a county has not requested, or has not been granted,  
31 permission by the State Department of Social Services to establish  
32 a procedure to evaluate and grant criminal records exemptions,  
33 the county shall not place a child into the home of a person  
34 described in subdivision (b) if any person residing in the home has  
35 been convicted of a crime other than a minor traffic violation,  
36 except as provided in subdivision (f).

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

1 (f) The State Department of Social Services shall evaluate a  
2 request from an Indian tribe to exempt a crime that is exemptible  
3 under Section 1522 of the Health and Safety Code, if needed, to  
4 allow placement into an Indian home that the tribe has designated  
5 for placement under the federal Indian Child Welfare Act (25  
6 U.S.C. Sec. 1901 et seq.). However, if the county with jurisdiction  
7 over the child that is the subject of the tribe’s request has  
8 established an approved procedure pursuant to paragraph (3) of  
9 subdivision (d), the tribe may request that the county evaluate the  
10 exemption request. Once a tribe has elected to have the exemption  
11 request reviewed by either the State Department of Social Services  
12 or the county, the exemption decision may only be made by that  
13 entity. Nothing in this subdivision limits the duty of a county social  
14 worker to evaluate the home for placement or to gather information  
15 needed to evaluate an exemption request.

16 SEC. 4. To the extent that this act has an overall effect of  
17 increasing the costs already borne by a local agency for programs  
18 or levels of service mandated by the 2011 Realignment Legislation  
19 within the meaning of Section 36 of Article XIII of the California  
20 Constitution, it shall apply to local agencies only to the extent that  
21 the state provides annual funding for the cost increase. Any new  
22 program or higher level of service provided by a local agency  
23 pursuant to this act above the level for which funding has been  
24 provided shall not require a subvention of funds by the state nor  
25 otherwise be subject to Section 6 of Article XIII B of the California  
26 Constitution.

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