

AMENDED IN ASSEMBLY APRIL 11, 1996
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SENATE BILL

No. 86

Introduced by Senator Haynes
(Principal coauthor: Assembly Member Kevin Murray)
(Coauthors: Senators Johannessen and Hurtt)
(Coauthors: Assembly Members Baldwin, Granlund,
Harvey, House, and Richter)

January 10, 1995

An act to amend Section 355 of the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

SB 86, as amended, Haynes. Dependent minors: jurisdictional hearing.

Existing law provides that the juvenile court shall, at the jurisdictional hearing, first consider only the question of whether the minor is a dependent child of the court, and permits the admission of any matter or information relevant and material to the circumstances or acts that are alleged to

bring the child within the jurisdiction of the juvenile court. However, it also provides that proof by a preponderance of evidence legally admissible in a civil case must be introduced to support such a finding. Existing law also provides that the juvenile court may receive and consider the reports and recommendations of the probation officer in dependency hearings. These provisions have been interpreted by the California Supreme Court in the case of *In re Malinda S.*, 51 Cal. 3d 368, to allow the admission of these reports and recommendations in determining the jurisdiction of the court in these matters even though they include otherwise inadmissible hearsay.

This bill would specify that a social study prepared by the petitioning agency may be admitted into evidence at the jurisdictional hearing, and constitutes competent evidence upon which a finding of jurisdiction may be based, as specified. It would require the preparer of the report to be available for examination on its contents. It would also provide that hearsay evidence contained in the report shall not be sufficient in itself to support a jurisdictional finding unless it would be admissible over objection in a civil or criminal action, the hearsay declarants are made available for cross-examination, the hearsay declarant is a child under the age of 12 years and is the subject of the hearing, or the declarant is a peace officer, health care professional, social worker, or teacher, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 355 of the Welfare and
2 Institutions Code is amended to read:
3 355. (a) At the jurisdictional hearing, the court shall
4 first consider only the question whether the minor is a
5 person described by Section 300. Any legally admissible
6 evidence that is relevant to the circumstances or acts that
7 are alleged to bring the minor within the jurisdiction of
8 the juvenile court is admissible and may be received in
9 evidence. Proof by a preponderance of evidence must be



1 adduced to support a finding that the minor is a person
2 described by Section 300.

3 (b) A social study prepared by the petitioning agency,
4 and hearsay evidence contained in it, is admissible and
5 constitutes competent evidence upon which a finding of
6 jurisdiction pursuant to Section 300 may be based, to the
7 extent allowed by subdivisions (c) and (d).

8 (1) For the purposes of this section, “social study”
9 means any written report furnished to the juvenile court
10 and to all parties or their counsel by the county probation
11 or welfare department in any matter involving the
12 custody, status, or welfare of a minor in a dependency
13 proceeding pursuant to Article 6 (commencing with
14 Section 300) to 12 (commencing with Section 385),
15 inclusive of Chapter 2 of Division 2.

16 (2) The preparer of the social study shall be made
17 available for cross-examination upon a timely request by
18 any party. The court may deem the preparer available for
19 cross-examination if it determines that the preparer is on
20 telephone standby and can be present in court within a
21 reasonable time of the request.

22 (3) The court may grant a reasonable continuance not
23 to exceed 10 days upon request by any party if the social
24 study is not provided to the parties or their counsel within
25 a reasonable time before the hearing.

26 (c) (1) If any party to the jurisdictional hearing raises
27 a timely objection to the admission of specific hearsay
28 evidence contained in a social study, the specific hearsay
29 evidence shall not be sufficient by itself to support a
30 jurisdictional finding or any ultimate fact upon which a
31 jurisdictional finding is based, unless the petitioner
32 establishes one or more of the following exceptions:

33 (A) The hearsay evidence would be admissible in any
34 civil or criminal proceeding under any statutory or
35 decisional exception to the prohibition against hearsay.

36 (B) The hearsay declarant is a minor under the age of
37 12 years who is the subject of the jurisdictional hearing.
38 However, the hearsay statement of a minor under the age
39 of 12 years shall not be admissible if the objecting party



1 establishes that the statement is unreliable because it was
2 the product of fraud, deceit, or undue influence.

3 (C) The hearsay declarant is a peace officer as defined
4 by Chapter 4.5 (commencing with Section 830) of Part 2
5 of Title 3 of the Penal Code, a health practitioner as
6 defined by Section 11165.8 of the Penal Code, a social
7 worker licensed pursuant to Chapter 14 (commencing
8 with Section 4996) of Division 2 of the Business and
9 Professions Code, or a teacher who holds a credential
10 pursuant to Chapter 2 (commencing with Section 44200)
11 of Part 24 of Division 3 of Title 2 of the Education Code;
12 ~~and the declarant's statement is contained in a report~~
13 ~~prepared by the declarant in the course and scope of his~~
14 ~~or her regular duties.~~ For the purpose of this subdivision,
15 evidence in a declaration is admissible only to the extent
16 that it would otherwise be admissible under this section
17 or if the declarant were present and testifying in court.

18 (D) The hearsay declarant is available for
19 cross-examination. For purposes of this section, the court
20 may deem a witness available for cross-examination if it
21 determines that the witness is on telephone standby and
22 can be present in court within a reasonable time of a
23 request to examine the witness.

24 (2) For purposes of this subdivision, an objection is
25 timely if it identifies with reasonable specificity the
26 disputed hearsay evidence and it gives the petitioner a
27 reasonable period of time to meet the objection prior to
28 a contested hearing.

29 (d) This section shall not be construed to limit the
30 right of any party to the jurisdictional hearing to
31 subpoena a witness whose statement is contained in the
32 social study or to introduce admissible evidence relevant
33 to the weight of the hearsay evidence or the credibility of
34 the hearsay declarant.

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