

Information Sheet 19 Requirements Regarding Relatives

The laws regarding mandatory search, notification, approval process, and placement efforts for relatives have continued to be updated and highlighted. This information sheet consolidates the legal requirements to identify, locate, notice, and engage relatives. These state and federal laws are intended to ensure that children and youth stay connected to safe and healthy relatives and/or to optimize placement opportunities and prevent entry into, or decrease time in, foster care placements.

Pre-Detention/Detention

If a child is taken into temporary custody, the social worker or probation officer must immediately release the child to the custody of a parent, guardian, or relative unless the circumstances in Welfare and Institutions Code sections 309(a) or 628(a) apply.¹

If, at the detention hearing, the child cannot be returned home, the court must determine if a relative or nonrelative extended family member (NREFM) is able and willing to care for the child.² [See sections A and B in attachment] Certain relatives must be given preferential consideration for placement.³

Child Welfare Only: temporary placement— If the relative or NREFM requests temporary placement, the social worker must initiate an emergency placement pursuant to Welfare and Institutions Code section 361.4.⁴ The child may be placed on an emergency basis upon completion of an assessment pursuant to section 361.4, which includes a California Law Enforcement Telecommunications System (CLETS), Child Abuse Central Index (CACI), and walk-through of the home.⁵ The social worker must ensure a fingerprint clearance check is done within 10 calendar days of the CLETS or 5-business days of making an emergency placement, whichever is sooner.⁶ If the CLETS indicates that the person has a criminal history, the child cannot be placed if there is a non-exemptible conviction. However, a child can be placed for any other conviction once the exemption is granted. A child can also be placed pending an exemption if the director or his or her designee determines it is in the best interest of the child and no party objects.⁷

At the detention hearing, the social worker has a duty to assess any relatives and indicate to the court whether the relatives are able and willing to take temporary custody of the child under section 309 and the assessment under section 361.4. The court must consider the recommendations of the social worker before placing the child with a relative or NREFM. Further, the court must order the parents to disclose

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise specified. All further rule references are to the California Rules of Court, unless otherwise specified.

² § 319((f)(1)

³ §§ 319, 319(d)(1)(2) 628.1, 636.

⁴ All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

⁵ §§ 309(d) and 361.4(a)

⁶ § 361.4(c)

⁷ § 361.4

to the social worker the names, residences, and any identifying information of maternal or paternal relatives.⁸

In dependency and delinquency cases, within 30 days of the child being taken into temporary custody, the social worker or probation officer must use due diligence to identify and locate relatives⁹ and must provide all adult relatives [See Section A of attachment] notice that the child has been removed from parents and options to participate in the child's care and placement.¹⁰ Therefore, it is imperative that the court inform the agency of this requirement, which will also serve as notice to the parents to work with the agency to provide information about all known family members. The Court may include in its order the agency's duty under this section.

Dispositional Hearing

From detention to disposition, the social services agency and probation department must continue to exercise due diligence by utilizing several search techniques--including internet searches--to identify, locate, and notice relatives and continue the preferential consideration for placement with relatives.¹¹ The Court may consider those efforts outlined in rules 5.695(g) and 5.790(f) to determine if the agency has exercised due diligence. [See Section C of attachment] At the dispositional hearing, the court must make a finding regarding whether the agency has exercised due diligence to identify and locate relatives.¹²

When a placement in foster care is being made, the proximity of the natural parents for visitation and reunification purposes must be given full consideration and placement must, if possible, be made in the home of a relative, unless the placement would not be in the best interest of the child.¹³

Child Welfare Only: The social worker has a continued obligation to assess a relative or NREFM's suitability for emergency placement.¹⁴ The agency must also initiate an assessment under section 361.3 of any relative to be considered for continuing placement.¹⁵

The dispositional hearing report must address the appropriateness of any relative.¹⁶ The report should identify the efforts utilized by the agency to locate and involve family.

The court can place with a relative if they have:

- Met Resource Family Approval, or

⁸ § 319

⁹ Relative is defined within the 5th degree in California. This includes parents, stepparents, grandparents, stepparents, siblings, aunts, uncles, nephews, nieces, cousins, great aunts and uncles, great-great grandparents and aunts and uncles, great-great-great grandparents, and relatives by marriage even if marriage ended due to death or divorce.

¹⁰ §§ 309, 628; rule 5.637

¹¹ §§ 309 and 628

¹² rule 5.695(f)

¹³ Family Code Section 7950(a)(1)

¹⁴ § 309

¹⁵ § 319(f)(3)

¹⁶ §§ 358.1, 361.3, 727

- Been assessed for emergency placement (note: section 361.4 requirements do not apply in probation), or
- Meet a compelling reason pursuant to section 16519.5(e).

The Court must also find whether the agency exercised due diligence in identifying, locating, and notifying all relatives.¹⁷ If the dispositional hearing is continued, the court may set a hearing to be held within 30 days from the date of removal or as soon as possible thereafter to consider and determine whether the agency exercised due diligence to identify, locate, and notify the child's relatives.¹⁸

If the Court finds that the agency has not exercised due diligence, the court may order the agency to conduct an investigation to identify, locate, and notify the child's relatives.¹⁹

The only exception to notice is if the relative has a personal history of family or domestic violence. This would require additional information from the agency or one of the parties indicating a history or a current restraining order and other relevant evidence.

Placement Changes

After the dispositional hearing, whenever a new placement of the child must be made, consideration for placement shall again be given to relatives who have not been found to be unsuitable and who will fulfill the child's reunification or permanent plan requirements. Social worker must use same requirements as provided under 361.3 and the county social worker shall consider whether the relative has established and maintained a relationship with the child.²⁰

Reunification Hearings

Case law in dependency proceedings and state policy through All County Letters indicate that the relative placement preference and duty to assess relatives is required by the agency.²¹ During the reunification period, placement with a relative or NREFM can be made as an emergency placement or based on a compelling reason.²²

Permanency and Post-Permanency Hearings

Under Family Code section 7950 and rule 5.740(b), at any permanency hearing in which the court terminates reunification services, or at any post-permanency hearing for a child not placed for adoption, the court must find that the social worker or probation officer has made diligent efforts to locate an appropriate relative and that each relative whose name has been submitted to the agency has been evaluated.

Disrupted or dissolved adoptions – Search for Biological Relatives

¹⁷ Rules 5.695, 5.790

¹⁸ Rule 5.695 (e)(f)

¹⁹ Rule 5.695(e)

²⁰ § 361.3 (d)

²¹ *In re Isabelle G* (2016) 246 Cal.App.4th 708; ACL 17-65

²² Welf. & Inst. Codes 361.3, 261.45, 6516.5; DCFS Policy (FYI 17-03)

Whenever a child is returned to the foster care system due to an adoption disruption or set aside, the child welfare agency and any licensed adoption agency may search for a “relative” of a previously adopted child and provide that relative with identifying information about the child, if it is believed that the child’s welfare would be promoted by furnishing this information.²³

"Relative" includes a member of the child's birth family and NREFMs, regardless of whether the parental rights were terminated, provided that both of the following are true:

(A) No appropriate potential caregiver is known to exist from the child's adoptive family, including NREFMs of the adoptive family.

(B) The child was not the subject of a voluntary relinquishment by the birth parents pursuant to Family Code section 8700 and Health and Safety Code section 1255.7.

Resources:

Please see the identifying connections for youth and helping the child find connections charts attached to help in the duty to find family members.

²³ § 361.3(f); All County Letter No. 08-43

The information in this document is based on laws in effect at the time of publication (January 2018). Federal and state laws may change at any time.

Judicial Resources and Technical Assistance Project
Center for Families, Children & the Courts
Judicial Council of California
(415) 865-7644

SECTION A – IDENTIFICATION AND NOTIFICATION REQUIRED FOR ALL OF THE FOLLOWING [5th Degree of Kinship/Relatives]

PATERNAL (Father) _____

MATERNAL (Mother) _____

NAME	NOTICED	NEXT STEPS		NAME	NOTICED	NEXT STEPS
			Sibling*			
			Grandparent*			
			Aunt*			
			Uncle*			
			Great-Grandparent			
			Great-Aunt			
			Great-Uncle			
			1 st Cousin			
			1 st Cousin			
			Great-great-Grandparent			
			Great-great-Aunt			
			Great-great Uncle			
			Spouse or domestic partner of any of the above			
			Extended Family Member			
			Extended tribal family member			

***PREFERENTIAL CONSIDERATION FOR PLACEMENT – Adult Sibling, Grandparent, Aunt, Uncle**

SECTION B – NON-RELATED, EXTENDED FAMILY (NREFM) AND IMPORTANT CONNECTIONS

RELATIONSHIP	NAME	LOCATED	NEXT STEPS	
Extended Family				
Extended Family				
Godparent				
Neighbor				
Neighbor				
Prior Foster Parent				
Group Home Staff Member				
Teacher				
Teacher				
Coach				
Friend's Parents				
Childhood Friends				
Who does child or youth miss?				

SECTION C – DUE DILIGENCE – EFFORTS AGENCY - TO BE CONSIDERD BY THE JUDICIAL OFFICER¹

Whether social worker has done any of the following:

- Asked the child, in an age-appropriate manner and consistent with the child’s best interest about his relatives
- Obtained information regarding the location of the child’s relatives;
- Reviewed the child’s case file for any information regarding relatives;
- Telephoned, e-mailed or visited all identified relatives;
- Asked located relatives for the names and locations of other relatives;
- Used Internet search tools to locate relatives identified as supports; or
- Developed tools to help the child or parents to identify relatives, including:
 - Genogram – Date Completed: _____
 - Family tree – Date Completed: _____
 - Family map –Date Completed: _____
 - Other diagram of family relationships
 - _____
 - _____
- Other Efforts
 - _____
 - _____
 - _____
 - _____

¹ Cal Rule of Court 5.695(f) – Note: not an exhaustive list. Can include any other efforts