

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 876 (Robert Rivas)
Version: February 14, 2023
Hearing Date: June 27, 2023
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Child fatalities and near fatalities: records

DIGEST

This bill permits, in cases in which a child or nonminor dependent who is subject to the jurisdiction of the juvenile court, the court to retain jurisdiction over the case for purposes of receiving documents and information related to the case; and requires the court, in such a circumstance, to keep the case open for that purpose if a party requests it, unless the court finds there is sufficient information to determine the cause of death without retaining jurisdiction.

EXECUTIVE SUMMARY

Under current law, each county must establish an interagency child death team to identify and review suspicious child deaths and facilitate communication between various agencies involved in child abuse and neglect cases. More specifically, existing law requires a local child welfare agency to disclose information about any agency or law enforcement investigation into the death of a child who is a dependent or ward of the juvenile court; the agency must publish specified documents upon the completion of the investigation, and additional documents must be made available upon request, provided that certain information is redacted and certain interested individuals have the opportunity to object to the disclosure.

In 2007, in the wake of reported deaths of children in foster care, California enacted legislation favoring greater transparency of such records, on the premise that such information would permit the state to better protect children. Unfortunately, stakeholders report that there is an ambiguity in the law regarding applications for the release of information and whether the juvenile court who had jurisdiction over the child's case continues to have jurisdiction over the case for purposes of ruling on any requests for information connected to the investigation. This bill clarifies that a juvenile court may retain jurisdiction after the death of a dependent child for the limiting

purpose of receiving relevant documents, including medical records, police reports, and autopsy reports, and requires the juvenile court to retain jurisdiction when a party requests that the case remain open for that limited purpose unless the court finds there is sufficient information to determine the cause of death without retaining jurisdiction. The bill does not alter any existing law provisions regarding access to, or confidentiality of, juvenile court records. The author has agreed to a minor clarifying amendment to ensure that, when the deceased child is an Indian child, the child's tribe has the right to request that a case stay open.

This bill is sponsored by the Children's Law Center of California and Dependency Legal Services, and is supported by the Child Abuse Prevention Center, the Family Law Section of the California Lawyers Association, the California Resource Family Resource Association, the Family Reunification, Equity, and Empowerment Project, and John Burton Advocates for Youth. There is no known opposition. If this Committee passes the bill, it will next be heard by the Senate Human Services Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Permits a county to establish an interagency child death team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases; records exempt from disclosure to third parties pursuant to state or federal law remain exempt, pursuant to specified guidelines, from disclosure when they are in the possession of a child death review team. (Pen. Code, § 11174.32.)
- 2) Requires that juvenile case files of dependent children or wards of the court be kept confidential, subject to specified exceptions, including when the court orders disclosure after a petition and noticed hearing and the court determines that the disclosure is not detrimental to the safety, protection, or physical or emotional wellbeing of a child connected to the case that is the subject of the petition. (Welf. & Inst. Code, § 827(a)(1).)
- 3) Provides that juvenile case files pertaining to a deceased child who was within the jurisdiction of the juvenile court must be released pursuant to an order of the court after the filing of a petition, an opportunity for interested parties to object, and a hearing on the petition. (Welf. & Inst. Code, § 827(a)(2).)
- 4) Requires the custodian of records for a county child welfare agency, within five days of learning that a child fatality occurred in the county and that there is a reasonable suspicion that the fatality was caused by abuse or neglect, to release the following information contained in a juvenile case file upon request:

- a) The age and gender of the child.
 - b) The date of death.
 - c) Whether the child resided in foster care or in the home of their parent or guardian at the time of death.
 - d) Whether an investigation is being conducted by a law enforcement agency or the county child welfare agency. (Welf. & Inst. Code, § 10850.4(a).)
- 5) Requires, upon completion of the child abuse or neglect investigation into the child's death in 4), the following documents from the juvenile case file to be released by the custodian of records upon request, subject to the redactions in 7):
- a) All the information in 4).
 - b) For cases in which the child's death occurred while living with a parent or guardian, all previous referrals of abuse or neglect of the deceased child while living with that parent or guardian; specified documents and reports completed by the county child welfare agency; health records except for mental health records that are reflective of a pattern of abuse or neglect; police reports about the person against whom the child abuse report was substantiated; and a description of actions taken by child protective services and the child welfare agency related to the deceased child, as specified.
 - c) For cases in which the child's death occurred in foster care, all of the information in 5)(b) plus specified records relating to the foster placement and foster parents. (Welf. & Inst. Code, § 10850.4(c).)
- 6) Provides that, for purposes of a disclosure under 5), abuse or neglect is determined to have led to a child's death if one or more of the following conditions are met:
- a) A county child protective services agency determines that the abuse or neglect was substantiated.
 - b) A law enforcement investigation concludes that abuse or neglect occurred.
 - c) A coroner or medical examiner concludes that the child who died had suffered abuse or neglect. (Welf. & Inst. Code, § 10850.4(b).)
- 7) Requires the custodian of records releasing information upon request pursuant to 5) to redact specified personal information about third parties, information that could jeopardize a criminal investigation or proceeding, and information that is privileged, confidential, or not otherwise subject to disclosure; and to notify the counsel of any child who is directly or indirectly connected to the case file so that the counsel can petition to prevent certain information from being discussed pursuant to 2). (Welf. & Inst. Code, § 10850.4(e), (f).)
- 8) Authorizes, notwithstanding any other provision of law, a county board of supervisors to receive and review any records in the custody of the juvenile court or any other involved county agencies relating to a child who has died and who has previously come to the attention of, or was under the supervision of, the county welfare agency.

- a) The information may be received and reviewed only in a closed session of the board and must be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.
 - b) The board or its members and staff may not disclose or release any information obtained unless otherwise permitted by law. (Welf. & Inst. Code, § 16502.5.)
- 9) Requires, as a condition of eligibility for the receipt of certain federal funds, a state to have a statewide operating plan relating to child abuse and neglect that includes provisions which allow for public closure of the findings or information about a case of child abuse or neglect which has resulted in a child fatality or near fatality. (42 U.S.C. § 5106a(b)(2)(B)(x).)

This bill:

- 1) Authorizes, in cases in which the death of a child or nonminor dependent occurred while the child or nonminor dependent was subject to the jurisdiction of the juvenile court, the court to retain jurisdiction of the case for purposes of receiving documents and information relating to the circumstances of the death, including, but not limited to, medical records, police reports, and autopsy reports.
- 2) Requires a case under 1) to remain open at the request of a party for the purpose of receiving the records, notwithstanding any other law, unless the court finds there is sufficient information to determine the cause of death without retaining jurisdiction.
- 3) Makes nonsubstantive technical and conforming changes.

COMMENTS

1. Author's comment

According to the author:

Despite its best efforts, the state can unwittingly place a foster youth in a home that is unsafe or abusive. When a youth dies while in foster care, current law is unclear as to whether the youth's case in Juvenile Court may remain open, resulting in instances where the youth's attorney might not have access to complete information regarding the circumstances of the death. This information could include medical records, police records, and autopsy reports. Without these records, all the facts regarding the circumstances of a death might not become known, possibly endangering other foster youth in the same home if follow-up action is not taken.

AB 876 makes an important clarification to current law that allows Juvenile Courts to retain jurisdiction if a youth in foster care passes away. Additionally, this legislation requires the court to keep these cases open at the request of the child's attorney or another party for the purposes of collecting relevant documents and information. In doing so, this legislation will improve transparency and access to information critical to protecting all foster youth and better position children's attorneys to best advocate for and protect all foster youth.

2. This bill clarifies that a juvenile court may retain jurisdiction over a case when a child or nonminor dependent dies for purposes of retaining documents related to the death

According to data reported by the California Department of Social Services (CDSS), over 2,000 California children died while in foster care or otherwise under the jurisdiction of the juvenile court between 2008 and 2022.¹ Existing law authorizes a county to establish an interagency review team to assist local agencies in identifying and reviewing suspicious child deaths;² law enforcement and other agencies may also independently investigate the death.

In 2007, after numerous instances of children dying due to abuse or neglect while at home or in foster care or other placements made by a county welfare agency, California enacted legislation to provide greater transparency of records relating to the death of a dependent child. SB 39 (Midgen, Ch. 468, Stats. 2007) revised the judicial and administrative release of records of fatalities and near fatalities of children living in foster care. It did so by (1) requiring a county welfare agency, within five days of a child's death, to release specified information regarding a deceased child where the death is reasonably suspected to be the result of abuse or neglect; and (2) establishing a process for the release of certain types of documents in the juvenile case file without court review, and for the release of other types of documents in the case file after a petition is filed with the court and interested parties are given an opportunity to object to the release of documents. The bill attempted to balance the public's right to know basic information about the health and safety of children living under the jurisdiction of the court with long-standing confidentiality rules designed to protect a child's confidentiality and privacy interests.

According to the author and stakeholders, some juvenile courts are unsure whether they have the authority to retain jurisdiction over a matter for purposes of overseeing requests for information from qualified parties. For example, the Children's Law Center of California, one of the bill's sponsors, writes:

¹ California Department of Social Services, Data and Reports, Fatalities & Near Fatalities Reported to CDSS, 2008-2022, <https://www.cdss.ca.gov/inforesources/child-fatality-and-near-fatality/data-and-reports> (link current as of June 23, 2023).

² Pen. Code, § 11174.32.

Existing law is ambiguous regarding the Juvenile Court's authority to maintain dependency jurisdiction after a child or [nonminor dependent] passes away. As a result, there are situations where a deceased child's case is closed before the court, the child's attorney, and other parties have received information regarding the circumstances of the child's death. In these situations, attorneys and families are left struggling with questions about the circumstances surrounding the child's death, and without knowing whether further action or referrals need to be taken. In many cases, answers to these questions never come.

This bill is intended to clarify the role of the juvenile court in managing requests for records under the SB 39 disclosure regime.

3. Amendment

The author has agreed to the following amendment, subject to any nonsubstantive changes the Office of Legislative Counsel may make, to ensure that, if the deceased child is an Indian child, the child's tribe has the right to request that the court retain jurisdiction over the case pursuant to this bill:

At page 6, in line 28, after "jurisdiction." insert "For purposes of this paragraph, in the case of an Indian child, a party shall include a child's tribe regardless of whether they have intervened pursuant to Section 224.4."

4. Arguments in support

According to the California Alliance of Caregivers:

Existing law is ambiguous regarding the Juvenile Court's authority to maintain dependency jurisdiction after a child or NMD passes away. As a result, there are situations where a deceased child's case is closed before the court, the child's attorney, and other parties have received information regarding the circumstances of the child's death. In these situations, attorneys and families are left struggling with questions about the circumstances surrounding the child's death, and without knowing whether further action or referrals need to be taken. In many cases, answers to these questions never come.

AB 876 makes an important clarification to the law to allow Juvenile Courts to retain jurisdiction when a foster youth under the jurisdiction of the court passes away. Additionally, this bill requires the court to keep these cases open at the request of the child's attorney or another party for the purposes of collecting relevant documents and information. AB 876 will provide an avenue for lawyers and parties to find out what happened to the child and whether further action is warranted.

SUPPORT

Children's Law Center of California (co-sponsor)
Dependency Legal Services (co-sponsor)
California Alliance of Caregivers
Child Abuse Prevention Center
California Lawyers Association, Family Law Section
California Resource Family Resource Association
Family Reunification, Equity, and Empowerment Project
John Burton Advocates for Youth

OPPOSITION

None known

RELATED LEGISLATION

Pending legislation: None known.

Prior legislation: AB 1625 (Assembly Budget Committee, Ch. 320, Stats. 2016) added disclosure requirements for when a child or nonminor dependent under the jurisdiction of the juvenile court experienced a near fatality, as defined, similar to the existing requirements for fatalities.

PRIOR VOTES:

Assembly Floor (Ayes 74, Noes 0)
Assembly Appropriations Committee (Ayes 14, Noes 0)
Assembly Judiciary Committee (Ayes 11, Noes 0)
