

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1071 (Umberg)
Version: March 21, 2022
Hearing Date: April 19, 2022
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Public social services: administrative hearings: juvenile records access

DIGEST

This bill authorizes the attorneys in an administrative appeal pertaining to a foster child or caregiver's receipt of certain state-administered public assistance programs to access the portions of the confidential juvenile case file that the agency relied on in reaching the appealed decision, without needing a court order to do so.

EXECUTIVE SUMMARY

As a general rule, juvenile case files are confidential and may be accessed only by specified classes of persons and entities unless a juvenile court finds good cause to release the files. (Welf. & Inst. Code, § 827 (section 827).) Traditionally, the only class of people entitled to access juvenile case files without a court order was parties to a juvenile dependency hearing, including the attorneys and parents. Over the years, the Legislature has expanded the list of automatically approved classes in section 827 to include: court personnel; prosecutors and various other attorneys; judges, referees, and other hearing officers; mediators; probation officers; law enforcement officers; investigators; the superintendent of the minor's school district; agencies that provide services to the minor or the minor's family; and certain parties/real parties in interest to an appeal or writ petition relating to a juvenile court order. All other parties wishing to view the records must petition the court for access, and the court must give the affected parties (including the juvenile) notice and the opportunity to be heard. In certain cases, disseminating juvenile case files without authorization is a misdemeanor.

When a child in foster care applies for public assistance programs administered by the California Department of Social Services (CDSS), CDSS may rely on documents within the juvenile case file in reaching its determination. In the case of a denial or termination of benefits, the child is authorized to appeal through counsel; but section 827 does not authorize counsel in a benefits appeal to view the juvenile case record without a court

order. Instead, attorneys in these administrative matters have to obtain a court order before viewing the portion of the case file relied on by CDSS, which can cause extensive delays before the appeal can be heard.

This bill is intended to eliminate those delays, first by adding a class of persons to section 827 who may view a juvenile case file without court approval: the attorneys in an administrative appeal of a decision on benefits for a foster child or caregiver wherein CDSS relied on a juvenile case file in reaching that decision. The bill also specifies that any confidential information viewed by authorized persons in connection with the hearing remains confidential, must be sealed after the hearing is complete, and cannot subsequently be released except by complying with section 827's existing restrictions. This bill also requires, if the public or private agency in such a hearing is required by regulation to allow the benefits applicant or recipient to involve the case file or other nonprivileged information prior to the administrative hearing, those records and information must be available no fewer than ten days before the hearing. Finally, the bill adds procedural requirements for CDSS appeals where the relevant agency is required to write a position statement, requiring that (1) the agency that made the ruling attach to its position statement a list of witnesses and copies of the evidence it intends to use, and (2) for appeals in specific benefits programs, the agency must also attach the portions of a juvenile case file it relied on in making its decision. The bill requires CDSS to adopt regulations to implement these requirements.

This bill was originally triple referred to the Senate committees on Human Services, Judiciary, and Public Safety. The referral to the Senate Public Safety Committee was rescinded because of the limitations placed on committee hearings due to the ongoing health and safety risks of the COVID-19 virus, and this analysis includes input from the Senate Public Safety Committee on the matters within its jurisdiction.

This bill is sponsored by the Alliance for Children's Rights and is supported by the California Alliance of Caregivers, the California Women's Law Center, the Coalition of California Welfare Rights Organizations, Community Legal Aid SoCal, the Pacific Juvenile Defender Center, and Public Counsel. There is no known opposition. This bill passed out of the Senate Human Services Committee with a 4-0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires that the juvenile court's findings in a juvenile case be entered in the form of a written record known as the "juvenile court record." (Welf. & Inst. Code, § 825.)
- 2) Defines the "juvenile case file" as a petition filed in a juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made

available to the probation officer, judge, referee, or other hearing officer and thereafter retained. (Welf. & Inst. Code, § 827(e).)

- 3) Provides that, unless a person is authorized to inspect a juvenile case file without a court order, the person seeking access to a juvenile case file must petition the juvenile court for the information. The court must afford due process to all interested parties before releasing a juvenile case file, including notice and an opportunity to file an objection. (Welf. & Inst. Code, § 827(a)(3).)
- 4) Provides that the following persons and agencies are authorized to inspect a juvenile case file without a court order:
 - a) Court personnel.
 - b) The district attorney, city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases.
 - c) The minor who is the subject of the proceeding.
 - d) The minor's parent or guardian.
 - e) The attorneys for the parties, judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in juvenile proceedings involving the minor.
 - f) The county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action.
 - g) The superintendent or designee of the school district where the minor is enrolled or attending school.
 - h) Members of specified child protective agencies.
 - i) The CDSS, to carry out its duties relating to CDSS-administered programs, overseeing and monitoring county child welfare agencies, foster children, and out-of-state placements.
 - j) Authorized CDSS staff and staff of other entities licensed by CDSS as necessary to perform their duties related to resource family approval, or as necessary to inspect, approve, or license, and monitor and investigate community care facilities or resource families.
 - k) Members of children's multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor.
 - l) Specified persons actively involved in a family law case concerning custody and/or visitation of the minor, including the judge, commissioner, or hearing officer; a family court mediator; a court-appointed evaluator or other person conducting a court-appointed custody evaluation or investigation; and counsel appointed for the minor in the case.
 - m) A statutorily authorized or court-appointed investigator conducting an investigation relating to, or participating in, a guardianship case involving a minor, while acting in the scope of the investigator's duties in the case.
 - n) A local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders.
 - o) Juvenile justice commissions and their members.

- p) The Department of Justice, to carry out its duties relating to the repository for sex offender registration and notification.
 - q) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.
 - r) A probation officer who is preparing a report relating to a hearing for an honorable discharge before the Board of Juvenile Hearings.
 - s) A person who was permitted by the superior court to view juvenile case records, when the person is a party or real party in interest to an appeal or writ petition relating to an order of the court. Such a person may view the same juvenile case records that they viewed in the superior court proceedings. (Welf. & Inst. Code, § 827(a)(1)(A)-(R) & (a)(6).)
- 5) Prohibits an agency or a person authorized to receive a juvenile case file from disseminating the file or information relating to its content to persons not authorized to receive the information without prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court. (Welf. & Inst. Code, § 827(a)(4).)
- 6) Provides that, if any applicant for or recipient of public social services is dissatisfied with any action of a county department relating to the application or receipt of public social services, they may file a request with CDSS or the California Department of Health Care Services (CDHCS) – whichever department administers the public social service – and be granted an opportunity for an administrative hearing to review the action. (Welf. & Inst. Code, § 10950(a).)
- 7) Requires CDSS or CDHCS, upon receipt for a hearing request, to set the hearing within 30 working days after the request is filed, and to give the parties notice of the time and place of the hearing at least ten days prior to the hearing. (Welf. & Inst. Code, § 10952.)
- 8) Provides that, where regulations require a public or private agency to write a position statement concerning the issues in question at a hearing pursuant to 6), the agency must make a copy of the position statement available to the party requesting the hearing at least two days before the hearing. If the agency fails to do so, the hearing must be postponed at the request of the party requesting the hearing. (Welf. & Inst. Code, § 10952.5.)

This bill:

- 1) Authorizes the attorneys in an administrative proceeding involving a minor or nonminor relating to the receipt or eligibility for CDSS-administered public assistance programs, when CDSS relied on a minor or nonminor's juvenile case file

as part of its decision, to view the minor or nonminor's juvenile case file without a court order.

- 2) Provides that, to the extent confidential juvenile case record information is used in an administrative proceeding in 1), the information shall remain confidential for purposes of the proceeding, and:
 - a) The information shall be available only to the judge or hearing officer and to the parties of the case;
 - b) The confidential information shall be sealed after the conclusion of the hearing; and
 - c) Following the sealing, the information can be released only in accordance with the existing restrictions on juvenile case files.
- 3) Provides that, where regulations require a public or private agency to allow the applicant for, or recipient of, public social services to examine the case record or other nonprivileged information that was used in taking the action that is being appealed, the records and information must be available for inspection by the applicant no fewer than ten days before the hearing.
- 4) Provides that, where regulations require a public or private agency to write a position statement concerning the action taken with respect to the public social services, the agency must include copies of the documentary evidence relied on and a list of witnesses intended to be called at the hearing as attachments to the position statement.
- 5) Provides that, in a hearing to review the agency's action or inaction regarding aid under the Aid to Families with Dependent Children-Foster Care program, the Approved Relative Caregiver Funding Program, the Emergency Assistance Program, the Kinship Guardianship Assistance Payment Program, and the Adoption Assistance Program, or for a hearing to review the agency's denial of an application to be approved as a resource family, the agency must attach all portions of the juvenile case file that it used in making its decision to take the action that is being appealed. The portions of the juvenile case file must be attached notwithstanding the statutory limits on disclosure of a juvenile case file.
- 6) Provides that CDSS, to implement provisions 4) and 5):
 - a) May, until January 1, 2024, issue an all-county letter or similar instruction on implementation. The instruction must classify the sections of the juvenile case file that will or may be pertinent to an administrative proceeding.
 - b) Must, by January 1, 2024, adopt necessary rules and regulations in accordance with the Administrative Procedure Act.

COMMENTS

1. Author's comment

According to the author:

SB 1071 would allow attorneys and judges in a Department of Social Services administrative hearing involving a minor in foster care to have access to juvenile case files for purposes of that hearing. Additionally, the bill would establish a timeframe for when counties must make certain records available.

When youth in foster care and their caregivers appeal a denial of foster care benefits or resource family approval, they must wait months or even years for an administrative hearing if their appeal is based on information contained in the youth's confidential juvenile case file. Current law lacks clarity on what types of records should be available in administrative hearings involving foster youth, who can access those records, and for what purpose. For youth and caregivers who ultimately prevail at the hearing, this means long delays in receiving critical funds that foster youth need for housing and other essentials.

Caregivers of foster children should not be required to wait months or years for an administrative hearing. Therefore, SB 1071 would clarify that attorneys and judges participating in administrative hearings involving a minor in foster care have timely access to juvenile case files and records.

2. This bill authorizes attorneys in appeals relating to foster care benefits to view a juvenile case file without a court order, to avoid lengthy delays in benefits appeals

Existing law recognizes the importance of maintaining the confidentiality of juvenile case files in order to protect the privacy rights of the child. Section 827 sets forth the categories of persons the Legislature has determined should automatically have access to juvenile case records.¹ All other persons who wish to view a juvenile case record must petition the court for permission to do so.² Section 827 grants the juvenile court "exclusive authority to determine whether and to what extent to grant access to confidential juvenile records" to persons not automatically granted access by the statute.³

For a person not pre-authorized by section 827 to view a juvenile case record, the procedure for petitioning the court to obtain an order is extensive. At least ten days before submitting the petition, the person must serve forms developed by the Judicial

¹ Welf. & Inst. Code, § 827(a)(1)(A)-(L).

² *Id.*, § 827(a)(1)(M).

³ *In re Elijah S.* (2005) 125 Cal.App.4th 1532, 1541.

Council of California setting forth the petition, the notice of the petition, and a blank form for objections to the petition on all of the following persons:

- The county counsel, city attorney, district attorney, or other attorney representing the child, depending on whether the child is a ward or dependent of the court;
- The child if the child is ten years of age or older;
- The attorney of record for the child who remains a ward or dependent of the court;
- The parents or guardians of the child, if the child is under 18 or the child is subject to the juvenile court's jurisdiction through a dependency petition;
- The probation department, child welfare agency, or both, if applicable;
- The child's Indian tribe; and
- The child's CASA volunteer.⁴

Once the petitioner files the petition, the court may deny it summarily if the petitioner did not show good cause to view the court file.⁵ If the petitioner did show good cause, the court must conduct an in camera hearing of the records sought by the petitioner and must assume that all legal claims of privilege are asserted.⁶ The court may hold a hearing to assist in determination of the issue.⁷ The court may grant the petition only if the petitioner shows, by a preponderance of the evidence, that the records are necessary and have substantial relevance to the petitioner's legitimate need for access, and if the court finds that the need outweighs the policy considerations favoring confidentiality of juvenile case files.⁸ The court must include in its order specific information about what material may be accessed and the procedure for obtaining access, and may issue protective orders to accompany the access.⁹

The importance of maintaining the confidentiality of juvenile records justifies this extensive procedure. However, in circumstances where a matter cannot proceed until a person obtains access to a juvenile case file, the result can be a significant delay in the matter, potentially causing harm to the juvenile in the meantime.

One such circumstance is in an appeal of a decision relating to public benefits administered by CDSS. CDSS is authorized to review a juvenile's case file in order to carry out its duties relating to determining the eligibility for, amount of, or need to terminate or reduce, a range of benefits programs when the potential recipient is a foster child or caregiver.¹⁰ If the foster child or caregiver elects to appeal CDSS's decision, however, there is no statutory authorization for their attorney to review

⁴ Cal. Rules of Court, r. 5.552(c).

⁵ *Id.*, r. 5.552(d)(1).

⁶ *Id.*, r. 5.552(d)(3).

⁷ *Id.*, r. 5.552(d)(2).

⁸ *Id.*, r. 5.552(d)(5), (6).

⁹ *Id.*, r. 5.552(7), (8).

¹⁰ Welf. & Inst. Code, § 827(a)(1)(I).

whatever portion of the files CDSS relied on in reaching that decision.¹¹ As such, the only way the attorney can gain access to the full record behind CDSS's decision – an essential step in an appeal – the attorney has to petition the court for access to the juvenile case file.¹² According to the sponsors of the bill, this creates a double delay in the appeal for benefits: first while the attorney waits for a decision on the petition for access, and then while the county processes the court order to produce the juvenile case file. There is no current statutory timeline for when counties must produce juvenile case files in response to an order, and the bill's sponsors and supporters state that this can delay an appeal for months – during which the child or caregiver may be completely without benefits to which they are entitled.

This bill is intended to eliminate these long delays by adding a new category of persons authorized under section 827 to view a juvenile case file: the attorneys in an administrative hearing involving the minor or nonminor pursuant to CDSS's administration of public assistance programs. To ensure that the confidentiality of the juvenile case file is maintained outside what is necessary for these proceedings, the bill provides a provision clarifying that the confidential information provided to these attorneys remains confidential for purposes of the hearing, and shall be made available only to the judge or hearing officer and parties to the case. And to ensure that confidentiality is maintained after the proceeding, the bill instructs that the confidential information shall be sealed at the conclusion of the hearing, and that any future request for the juvenile case file must be made pursuant to section 827.

The bill also provides a timeline for the provision of the case file, and any other information relied on as part of the decision being appealed. Specifically, the bill adds a requirement that, if regulations require a public or private agency to allow the applicant for, or recipient of, public social services to view the case record or other nonprivileged information relied on in the action being appealed, the records and information must be made available for inspection no later than ten days before the hearing. This addition is intended to ensure that appellants have adequate time before the hearing to review the case file and other information necessary to present their case at the hearing.

Finally, the bill adds a requirement that, in cases where a public or private agency is required to write a position statement on the issues in question at the hearing,¹³ the position statement must include as attachments to the position statement copies of the documentary evidence and a list of witnesses it plans to call to the hearing. The bill further specifies that, in hearings on certain foster-care-related benefits, the agency must attach the portions of the juvenile case file relied on. These provisions will give the appellant and their counsel notice of the information relevant to the hearing in advance of that hearing and allow the appellant and counsel to better prepare their hearing

¹¹ See generally *id.*, § 827(a)(1).

¹² See *id.*, § 827(a)(1)(Q).

¹³ See *id.*, § 10952.5.

presentation. The bill requires CDSS to implement these provisions through an all-county letter in the short term and through rules and regulations by January 1, 2024.

3. Arguments in support

Supporters of the bill—a collection of legal aid, foster care advocates, and welfare rights organizations—argue that this bill is necessary to avoid the lengthy delays caused by current law. Committee staff is not aware of opposition to the bill. For example, bill sponsor Alliance for Children’s Rights writes:

State law requires administrative hearings [on state-administered public assistance] to be resolved within 90 days of the hearing request. However, hearings involving a child in foster care may be delayed for months or even years if a material fact is contained in the foster youth’s juvenile case file, rather than the county administrative file. For example, an Alliance client, “Eva,” a nonminor dependent in extended foster care, appealed the county’s denial of retroactive foster care benefits due to a delay in approving Eva’s Supervised Independent Living Placement (SILP). Eva’s attorney argued that Eva should receive funding going back to the date she signed a Voluntary Reentry Agreement with the county—but the Voluntary Reentry Agreement was located in Eva’s juvenile case file...

Obtaining juvenile case files through a [section 827] petition can take weeks or months, and once a petition is granted, there are no timelines that counties must follow to produce the records in a timely manner. ALJs have no choice but to postpone hearings pending release of the requested records, meaning that youth and their caregivers go months without financial support. Although youth and caregivers that ultimately prevail at a hearing are entitled to retroactive payment, extended gaps in financial support can destabilize the placement, especially for children with significant educational, developmental, and physical and mental health needs...

SB 1071 will increase placement stability for children in foster care who would otherwise experience long delays in receiving financial support to meet their basic needs. SB 1071 will provide much-needed clarity on what types of juvenile case file records are pertinent in administrative hearings involving foster youth, who can access those records, and when those records must be made available.

SUPPORT

Alliance for Children’s Rights (sponsor)
California Alliance of Caregivers
California Women’s Law Center

Community Legal Aid SoCal
Coalition of California Welfare Rights Organizations
Pacific Juvenile Defender Center
Public Counsel

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 2711 (Calderon, 2022) allows an adoption file, including a juvenile case file, to be inspected and copied by CDSS for the purpose of completing its duties relating to the adoption of minors. AB 2711 is pending before the Assembly Human Services Committee.

Prior Legislation:

AB 2659 (Cooley, 2018) would have authorized an individual seeking access to juvenile case files in child dependency proceedings to petition the criminal court for the release of information to a criminal prosecutor or defense attorney of record if the court determined that the file contained information that is material to a current criminal prosecution, as specified. AB 2659 died in the Assembly Appropriations Committee.

AB 1617 (Bloom, Ch. 992, Stats. 2018) authorized parties who were permitted to view juvenile case files in the juvenile court, and who are parties or real parties in interest to an appeal or writ proceeding to an order of that juvenile court, to view the same juvenile case files for purposes of the appeal or writ proceeding, subject to the existing limitations on dissemination of records.

SB 312 (Skinner, Ch. 679, Stats. 2017) authorized the court to order the sealing of records for certain serious or violent offenses committed when a juvenile was 14 years of age or older, as specified.

AB 1945 (Stone, Ch. 858, Stats. 2016) authorized a child welfare agency to access sealed juvenile records for limited purposes.

PRIOR VOTES:

Senate Human Services Committee (Ayes 4, Noes 0)
