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ARNOLD SCHWARZENEGGER
GOVERNOR

October 6, 2008

ALL COUNTY LETTER NO. 08-43

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

TO: ALL COUNTY WELFARE DIRECTORS
ALL PUBLIC AND PRIVATE ADOPTION AGENCIES
ALL CDSS ADOPTIONS DISTRICT OFFICES
ALL ADOPTION SERVICE PROVIDERS
ALL CHIEF PROBATION OFFICERS

SUBJECT: ASSEMBLY BILL (AB) 714 (Chapter 108, Statutes of 2007): RELEASE OF INFORMATION TO BIRTH RELATIVES OF PREVIOUSLY ADOPTED CHILDREN

REFERENCE: WELFARE & INSTITUTIONS CODE (W&IC) SECTION 361.3
FAMILY CODE SECTIONS 9100 AND 9102

The purpose of this All County Letter (ACL) is to inform county personnel and licensed adoption agencies of changes in policy that allow for the release of information to birth relatives of previously adopted children whose adoption failed or was set aside. This bill concerns situations where an adopted child is returned to the foster care system due to the death or incapacitation of an adoptive parent, or other disruption to the adoption. The intent of this bill is to give previously adopted children the same opportunity to achieve permanency as other foster children by exploring birth family connections.

PROVISIONS OF AB 714

Effective January 1, 2008, AB 714 amended W&IC Section 361.3. This statute permits a child welfare agency and any licensed adoption agency to search for a “relative” of a previously adopted child, and provide that relative with identifying information relating to the child, if it is believed that the child’s welfare would be promoted by the furnishing of this information.

“Relative” includes a member of the child’s birth family and any Non-Related Extended Family Members (NREFMs), regardless of whether the birth parent(s) rights were terminated.

The provisions of this statute apply to a child who meets all of the following criteria:

1. Does not have an appropriate potential caretaker that exists from his/her adoptive family, including a NREFM of the adoptive family;
2. Was previously a dependent of the court;
3. Was previously adopted and the adoption has been disrupted, set aside pursuant to Section 9100 and 9102 of the Family Code, or has been released into the custody of the California Department of Social Services (CDSS) or a licensed adoption agency by the adoptive parent(s); and
4. Was not the subject of a voluntary relinquishment by the birth parent(s).

Effective January 1, 2008, when a child who meets the above criteria is removed from the home of an adoptive parent, an agency should use the same standards and procedures to identify a safe and permanent home as utilized when a child is removed from their birth parent(s). The same preferential consideration given to a birth relative who requests placement of the previously adopted child in their home should be used. Once the birth relative is found, and desires to provide a safe and permanent home, the agency may furnish identifying information relating to the child to that relative, if doing so promotes the welfare of the child.

For further information or clarification, please contact the Permanency Policy Bureau, at (916) 657-1858.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division

c: County Welfare Directors Association

Assembly Bill No. 714

CHAPTER 108

An act to amend Section 361.3 of the Welfare and Institutions Code, relating to adoption.

[Approved by Governor July 20, 2007. Filed with Secretary of State July 20, 2007.]

legislative counsel's digest

AB 714, Maze. Adoption: relatives: release of information.

Existing law requires that, in any case in which a child is removed from the physical custody of his or her parents pursuant to specified provisions of law, preferential consideration be given to a request by a relative of the child for placement of the child with the relative.

Existing law prohibits the State Department of Social Services and licensed adoption agencies from releasing information that would identify persons who receive, or have received, adoption services, except as specified.

This bill would provide that, with respect to a child who was previously a dependent of the court and was previously adopted, and whose adoption has been disrupted or set aside pursuant to specified provisions, or who has been released into the custody of the department or a licensed adoption agency by the adoptive parents or parent, the department and any licensed adoption agency may search for a relative and furnish identifying information relating to the child to that relative if it is believed the child's welfare will be promoted thereby. The bill would provide that, for the purposes of these provisions, a relative includes a member of the child's birth family and nonrelated extended family members, regardless of whether the parental rights were terminated, provided that specified circumstances exist.

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

SECTION 1. It is the intent of the Legislature to support counties in their work to promote finding families for children who are in the foster care system. In doing this work, counties have discovered children who were adopted, but their adoptions were disrupted and the children's custody was returned to the counties. These children should be afforded the same opportunity to explore birth family connections and achieve permanency as children who remain in planned permanency living arrangements.

SEC. 2. Section 361.3 of the Welfare and Institutions Code is amended to read:

361.3. (a) In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential

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consideration shall be given to a request by a relative of the child for placement of the child with the relative. In determining whether placement with a relative is appropriate, the county social worker and court shall consider, but shall not be limited to, consideration of all the following factors:

(1) The best interest of the child, including special physical, psychological, educational, medical, or emotional needs.

- (2) The wishes of the parent, the relative, and child, if appropriate.
- (3) The provisions of Part 6 (commencing with Section 7950) of Division 12 of the Family Code regarding relative placement.
- (4) Placement of siblings and half siblings in the same home, if that placement is found to be in the best interest of each of the children as provided in Section 16002.
- (5) The good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect.
- (6) The nature and duration of the relationship between the child and the relative, and the relative's desire to care for, and to provide legal permanency for, the child if reunification is unsuccessful.
- (7) The ability of the relative to do the following:
 - (A) Provide a safe, secure, and stable environment for the child.
 - (B) Exercise proper and effective care and control of the child.
 - (C) Provide a home and the necessities of life for the child.
 - (D) Protect the child from his or her parents.
 - (E) Facilitate court-ordered reunification efforts with the parents.
 - (F) Facilitate visitation with the child's other relatives.
 - (G) Facilitate implementation of all elements of the case plan.
 - (H) Provide legal permanence for the child if reunification fails.

However, any finding made with respect to the factor considered pursuant to this subparagraph and pursuant to subparagraph (G) shall not be the sole basis for precluding preferential placement with a relative.

(I) Arrange for appropriate and safe child care, as necessary.

(8) The safety of the relative's home. For a relative to be considered appropriate to receive placement of a child under this section, the relative's home shall first be approved pursuant to the process and standards described in subdivision (d) of Section 309.

In this regard, the Legislature declares that a physical disability, such as blindness or deafness, is no bar to the raising of children, and a county social worker's determination as to the ability of a disabled relative to exercise care and control should center upon whether the relative's disability prevents him or her from exercising care and control. The court shall order the parent to disclose to the county social worker the names, residences, and any other known identifying information of any maternal or paternal relatives of the child. This inquiry shall not be construed, however, to guarantee that the child will be placed with any person so identified. The county social worker shall initially contact the relatives given preferential consideration for

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placement to determine if they desire the child to be placed with them. Those desiring placement shall be assessed according to the factors enumerated in this subdivision. The county social worker shall document these efforts in the social study prepared pursuant to Section 358.1. The court shall authorize the county social worker, while assessing these relatives for the possibility of placement, to disclose to the relative, as appropriate, the fact that the child is in custody, the alleged reasons for the custody, and the projected likely date for the child's return home or placement for adoption or legal guardianship. However, this investigation shall not be construed as good cause for continuance of the dispositional hearing conducted pursuant to Section 358.

(b) In any case in which more than one appropriate relative requests

preferential consideration pursuant to this section, each relative shall be considered under the factors enumerated in subdivision (a).

(c) For purposes of this section:

(1) "Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated.

(2) "Relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great" or "grand" or the spouse of any of these persons even if the marriage was terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for the placement of the child: an adult who is a grandparent, aunt, uncle, or sibling.

(d) Subsequent to the hearing conducted pursuant to Section 358, whenever a new placement of the child must be made, consideration for placement shall again be given as described in this section to relatives who have not been found to be unsuitable and who will fulfill the child's reunification or permanent plan requirements. In addition to the factors described in subdivision (a), the county social worker shall consider whether the relative has established and maintained a relationship with the child.

(e) If the court does not place the child with a relative who has been considered for placement pursuant to this section, the court shall state for the record the reasons placement with that relative was denied.

(f) (1) With respect to a child who satisfies the criteria set forth in paragraph (2), the department and any licensed adoption agency may search for a relative and furnish identifying information relating to the child to that relative if it is believed the child's welfare will be promoted thereby.

(2) Paragraph (1) shall apply if both of the following conditions are satisfied:

(A) The child was previously a dependent of the court.

(B) The child was previously adopted and the adoption has been disrupted, set aside pursuant to Section 9100 or 9102 of the Family Code, or the child has been released into the custody of the department or a licensed adoption agency by the adoptive parent or parents.

(3) As used in this subdivision, "relative" includes a member of the child's birth family and nonrelated extended family members, regardless

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of whether the parental rights were terminated, provided that both of the following are true:

(A) No appropriate potential caretaker is known to exist from the child's adoptive family, including nonrelated extended family members of the adoptive family.

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

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