

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

AB 1794 (Gipson)
Version: March 17, 2022
Hearing Date: June 21, 2022
Fiscal: Yes
Urgency: No
ME

SUBJECT

Postadoption contact agreements: reinstatement of parental rights

DIGEST

This bill furthers the State public policy of helping siblings maintain contact with each other when they are in the child welfare system and provides further avenues for some parents to have their parental rights reinstated after they have been terminated.

EXECUTIVE SUMMARY

In an effort to assist siblings to have meaningful contact with each other, this bill allows a postadoption contact agreement with birth relatives to include, for siblings, actual contact with the child even if the sibling does not have a preexisting relationship with the child. The bill also adds siblings of nonminor dependents to the list of those required to get notice of hearings to terminate parental rights in dependency court. And, in specified circumstances, requires the county placing agency, except when the court determines that sibling interaction is contrary to the safety or well-being of the child, to convene a meeting with the child, the siblings of the child, the prospective adoptive parents, and a facilitator to execute a postadoption sibling contact agreement after termination of parental rights and prior to finalization of the adoption, if parental rights are terminated and the court orders that a dependent child or ward be placed for adoption, as specified. However, if the child being placed for adoption does not wish to enter into a postadoption sibling contact agreement, the county placing agency is prohibited from convening the meeting.

Existing law recognizes that there may be a need, for the best interest of the child, for terminated parental rights to be reinstated. Current law allows a child, who has not been adopted after the passage of at least three years from the date the court terminated their parents' parental rights (or shorter if certain conditions are met) and for whom the court has determined that adoption is no longer the permanent plan, to petition the court to reinstate parental rights. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court is required to hold a hearing, and the court is required to grant the petition if it finds by clear and convincing

evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. In an effort to ensure that children and youth are not left as legal orphans, this bill allows a child or nonminor dependent to petition the juvenile dependency court for reinstatement of parental rights in additional specified situations, and for the reinstatement of parental rights to be granted if it is in the best interest of the child

This bill is sponsored by the Children's Law Center of California and supported by other organizations that advocate for children and youth in the child welfare system. There is no known opposition to the bill and the bill passed out of the Assembly with only one "no" vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Makes legislative findings and declarations regarding the benefit of continuing contact between some adoptive children and their birth relatives and the importance of postadoption contact agreements, which can be beneficial to adoptive children under certain circumstances. States that nothing in California adoption laws shall be construed to prevent adopting parents from entering into a voluntary agreement with the child's birth relatives to permit continuing contact between the child and the birth relatives if the agreement is found by the court to have been executed voluntarily and to be in the best interests of the child at the time the adoption petition is granted. Limits the terms of a postadoption contact agreement to just sharing information about the child for any relative, other than the birth parents, who does not have a preexisting relationship with the child. Provides ways to seek enforcement of a post-adoption contact agreement, but requires the agreement to warn the parties that the adoption will not be set aside due to failure to comply with the terms of the postadoption contact agreement. (Fam. Code § 8616.5.)
- 2) Allows a court, in an appropriate action, to find that more than two persons with a claim for parentage are parents if the court finds that recognizing only two parents would be detrimental to the child. In determining detriment, requires the court to consider all relevant factors, including the harm of removing the child from a stable placement with a parent who has fulfilled the child's physical and psychological needs for a substantial period of time. Provides that a finding of detriment to the child does not require a finding of unfitness of any person. (Fam. Code § 7612.)
- 3) Creates an exception to the rule that adoption relieves the existing parents of all parental duties and responsibilities for an adopted child if the existing parents and the prospective adoptive parent sign a waiver at any time prior to finalization of the adoption. (Fam. Code § 8617.)

- 4) Creates an exception to the rule that adoption relieves the birth parents of all parental duties and responsibilities for the adoption of an adult child if the adult child chooses to sign a waiver of termination of parental duties and responsibilities prior to finalization of the adoption. (Fam. Code § 9306.)
- 5) Requires states to use “reasonable efforts” to place siblings together, unless such placement is contrary to their safety or well-being. If siblings are not placed together, visitation between them must occur frequently, unless it is contrary to their safety or well-being. (42 U.S.C. Sec. 671 (a).)
- 6) States that it is the intent of the Legislature to (a) ensure that siblings who are removed from a home will be placed in foster care together unless the placement is contrary to the safety or well-being of any sibling; and (b) when a child has been removed from the child’s home and the child has siblings who remain in the custody of a parent subject to the court’s jurisdiction, the court has the authority to develop a visitation plan for the siblings, unless it has been determined that visitation is contrary to the safety or well-being of any sibling. (Welf. & Inst. Code § 16002 (a).)
- 7) Requires the county adoption agency or the Department of Social Services (DSS), if parental rights are terminated and the court orders a dependent child or ward to be placed for adoption, to take steps to facilitate ongoing sibling contact, except in those cases where the court determines by clear and convincing evidence that sibling interaction is contrary to the safety or well-being of the child. Steps include:
 - a) Providing training to prospective adoptive parents about the importance of sibling relationships to the adopted child and counseling on methods for maintaining sibling relationships and information about siblings of the child.
 - b) To the extent practicable, requires the county placing agency to convene a meeting with the child, the siblings of the child, the prospective adoptive parents, and a facilitator for the purpose of deciding whether to voluntarily execute a postadoption sibling contact agreement after termination of parental rights and prior to finalization of the adoption. Provides that the county placing agency is not required to convene the meeting if the county placing agency determines that such a meeting or postadoption sibling contact agreement would be contrary to the safety and well-being of the child or the child requests that the meeting not occur. Allows the child to petition the court for an order requiring the county placing agency to convene a meeting to decide whether to voluntarily execute a postadoption sibling contact agreement. (Welf. & Inst. Code § 16200 (e).)
- 8) Sets forth procedures for enforcing postadoption contact agreements between siblings for children adopted through the child welfare system. Provides that the

court granting the petition of adoption maintains jurisdiction over the child for enforcement of the postadoption contact agreement. (Welf. & Inst. Code § 366.29.)

- 9) Requires a social worker, where possible and appropriate, to place a child, who has been removed from their parents or guardians because of abuse or neglect, together with their siblings or half-siblings also being removed, or to describe continuing efforts to place them together if they are not initially placed together, or to explain why placing them together is inappropriate. (Welf. & Inst. Code § 306.5.)
- 10) Requires any order placing a child in foster care to provide for visitation between a child and any siblings unless the court finds by clear and convincing evidence that sibling interaction is contrary to the safety and well-being of either child. Allows any person, including a child or nonminor dependent, to petition the juvenile court to assert a sibling relationship of a child or nonminor dependent. (Welf. & Inst. Code § 362.1.)
- 11) Provides that any order of the juvenile court terminating parental rights, as provided, is conclusive and binding to those with notice, but this does not limit the right to appeal the order. (Welf. & Inst. Code § 366.26 (i)(1).)
- 12) Notwithstanding 10), allows a child, who has not been adopted after the passage of at least three years from the date the court terminated their parents' rights, and for whom the court has determined that adoption is no longer the permanent plan, to petition the juvenile court to reinstate parental rights, as provided. Allows the child to file the petition prior to the expiration of the three-year period, provided DSS, or the county child welfare adoption agency, and the child stipulate that the child is no longer likely to be adopted. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, requires the court to order that a hearing be held. Requires the court to grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. (Welf. & Inst. Code § 366.26 (i)(3).)
- 13) Allows parents, interested persons, and children or nonminor dependents to petition the juvenile court to modify an order issued in a dependency case based on a change of circumstances. (Welf. & Inst. Code § 388.)
- 14) Provides for the use of tribal customary adoption in the child welfare system to allow Indian children to be adopted without first terminating the birth parents' rights. (Welf. & Inst. Code § 366.24)

This bill:

- 1) Allows a postadoption contact agreement with birth relatives to include, for siblings, actual contact with the child, even if the siblings do not have a preexisting relationship with the child.
- 2) Adds siblings of nonminor dependents to the list of those required to get notice of hearings to terminate parental rights in dependency court.
- 3) Except as provided in 4), if parental rights are terminated and the court orders that a dependent child or ward be placed for adoption, requires the county placing agency, except when the court determines that sibling interaction is contrary to the safety or well-being of the child, to convene a meeting with the child, the siblings of the child, the prospective adoptive parents, and a facilitator to execute a postadoption sibling contact agreement after termination of parental rights and prior to finalization of the adoption.
- 4) If the child being placed for adoption does not wish to enter into a postadoption sibling contact agreement, prohibits the county placing agency from convening the meeting in 3).
- 5) In addition to situations permitted in existing law, allows a child or nonminor dependent to petition the juvenile dependency court for reinstatement of parental rights in any of the following situations:
 - a) A child for whom the parental rights of their biological parents were terminated, who was subsequently adopted, and for whom the parental rights of their adoptive parents have been terminated.
 - b) A child for whom the parental rights of their biological parents were terminated, who was subsequently adopted, and for whom the adoptive parent or parents are in agreement with reinstatement of parental rights. Requires the court, if reinstatement of parental rights would result in more than two persons being recognized as parents, to make findings required in the Family Code for the recognition of more than two parents or requires that the case involve tribal customary adoption.
 - c) A nonminor dependent for whom the parental rights of their biological parents were terminated and who was subsequently adopted, consistent with existing law. Allows the nonminor whose biological parents' rights have been reinstated to waive termination of parental duties and responsibilities of the existing adoptive parents by signing a waiver prior to adoption, consistent with existing law.

- 6) Requires a nonminor dependent or a child over 12 years of age to sign the petition in 5), absent a showing of good cause why the nonminor dependent or child cannot do so.
- 7) Requires the court to order a hearing on a petition in 5) if it appears that the best interest of the child or nonminor dependent may be promoted by reinstatement of parental rights. Sets forth notice requirements.
- 8) Requires, consistent with existing law, the court to grant the petition in 5) if it finds, by clear and convincing evidence, that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. Requires the court, if it reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardian, to specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights, consistent with existing law. Provides that this provision is intended to be retroactive to any child under the jurisdiction of the juvenile court, consistent with existing law.

COMMENTS

1. Support for the bill

The author writes:

Ensuring that those in the foster care system have access to the essential bond of a blood relative is a basic right any child deserves. Often, when parental rights are terminated in child welfare cases, the adopted child loses all familial ties, including with siblings. AB 1794 looks to address the gaps and inconsistencies in implementation of current law surrounding siblings who are separated by adoption. This bill would allow children and young adults adopted through the child welfare system to maintain critical connections to their biological family and community. Additionally, in some circumstances, a child/nonminor dependent may re-establish a relationship with their biological parents when an adoption fails. It makes sense for these children, who want to live with their birth parents, to have an option to reinstate the biological parents' rights; however, there is no mechanism for this process to occur. Unless it has been determined that placement together is contrary to the safety and well being of any sibling. AB 1794 provides a path forward for these families. We have plenty more work to do. But, this is a step toward a better foster care system.

The American Civil Liberties Union, in support, writes:

Many children and young adults adopted through the family regulation system, commonly referred to as the child welfare system, report that maintaining a connection to their biological family and community, especially with their siblings, is critical to their wellbeing. Current law recognizes the

importance and need to maintain family connections for adoptees when appropriate.

Despite existing protections, too often children and nonminors adopted from the family regulation system lose all familial ties. AB 1794 seeks to address the gaps and inconsistencies in the implementation of current law meant to protect familial relationships by requiring the child welfare agency set up a meeting to address post-adoption contact between siblings when parental rights are terminated and broadening the circumstances in which a court may reinstate parental rights for a biological parent. [. . .]

2. It is the public policy of the state and nation to protect the sibling relationship

In October 2008, Congress passed, and the President signed, the Fostering Connections to Success and Increasing Adoptions Act (Act) to promote permanent families for children and youth in foster care by providing greater assistance to relative caregivers and improving incentives for adoption. The Act also extended assistance for foster children to age 21 and improved education and health care for children and youth in foster care. Further, the Act required states to use “reasonable efforts” to place siblings together, unless such placement is contrary to their safety or well-being. If the siblings are not placed together, visitation between them must occur frequently, unless the visitation is contrary to their safety or well-being. (42 U.S.C. Sec. 671(a).)

Prior to passage of the Act, California was one of the first states to pass legislation promoting sibling visitation for foster children as early as 1999. (See AB 740, Chapter 805, Statutes of 1999.) Since then California has enacted several additional statutes to expand legal protections for sibling relationships. Creating another mechanism by which the court may further protect sibling relationships, SB 1099 (Steinberg, Ch. 773, Stats. 2014) gave dependency courts the authority to order visitation between dependent and non-dependent siblings in specified circumstances. To further protect sibling relationships California enacted SB 1060 (Leno, Ch. 719, Stats. 2016) to require the county placing agency, *to the extent practicable*, to convene a meeting with the child, siblings of the child, prospective adoptive parents, and a facilitator for the purpose of deciding whether to execute a postadoption sibling contact agreement for a child being adopted out of the child welfare system.

To further the public policy to protect the sibling relationship the bill now before this Committee *requires* the county placing agency, except when the court determines that sibling interaction is contrary to the safety or well-being of the child, to convene a meeting with the child, the siblings of the child, the prospective adoptive parents, and a facilitator to execute a postadoption sibling contact agreement after termination of parental rights and prior to finalization of the adoption, if parental rights are terminated and the court orders that a dependent child or ward be placed for adoption, as specified. However, if the child being placed for adoption does not wish to enter into a postadoption sibling contact agreement, the county placing agency is prohibited from

convening the meeting. This bill also allows a postadoption contact agreement with birth relatives to include, for siblings, actual contact with the child, even if the siblings do not have a preexisting relationship with the child. Additionally, the bill adds siblings of nonminor dependents to the list of those required to get notice of hearings to terminate parental rights in dependency court.

A postadoptive contact agreement provides for contact between a child and their birth parents and other birth relatives, including siblings. These agreements can also provide for how the adoptive family and birth family will share information about the child in the future. Postadoption contact agreements are intended to ensure children maintain an achievable level of continuing contact when contact is beneficial to the child, and the agreements are voluntarily entered into by the parties.

3. Allows for the reinstatement of parental rights in limited circumstances and if in the best interest of the child

Sometimes parental rights have to be terminated and children are placed in other permanency options, including adoption, guardianship, or long-term foster care. Existing law recognizes that there may be a need, for the best interest of the child, for those terminated parental rights to be reinstated. Current law allows a child, who has not been adopted after the passage of at least three years from the date the court terminated their parents' parental rights (or shorter if certain conditions are met) and for whom the court has determined that adoption is no longer the permanent plan, to petition the court to reinstate parental rights. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court is required to hold a hearing and the court is required to grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest.

Reinstating parental rights in some cases helps to ensure that children are not left as legal orphans, with their birth parents' rights terminated and with no adoptive family. Instead, provided the court determines it is in the best interest of the child, parental rights can be reinstated. This bill expands on that provision and creates three additional times when parental rights may be reinstated. These are: (1) a child for whom the parental rights of their biological parents were terminated, who was subsequently adopted, and for whom the parental rights of their adoptive parents have been terminated; (2) a child for whom the parental rights of their biological parents were terminated, who was subsequently adopted, and for whom the adoptive parents are in agreement with reinstatement of parental rights; and (3) a nonminor dependent for whom the parental rights of their biological parents were terminated and who was subsequently adopted.

The bill requires the court, if reinstatement of parental rights would result in more than two persons being recognized as parents, to make findings required in the Family Code

for the recognition of more than two parents or requires that the case involve tribal customary adoption. (*See* Family Code Section 7612; WIC Section 366.24.)

SUPPORT

Children's Law Center of California (sponsor)
ACLU California Action
California Catholic Conference
California Youth Connection
Los Angeles Dependency Lawyers, Inc.
National Association of Social Workers, California Chapter

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 2845 (Patterson, 2022) This bill expands the use of post adoption contact agreements to maintain ties between an adopted child and their birth family and specifies what a court must consider before ruling on a petition to terminate parental rights. This bill is currently pending in this Committee.

Prior Legislation:

SB 1060 (Leno, Ch. 719, Stats. 2016) required the county placing agency, to the extent practicable, to convene a meeting with the child, siblings of the child, prospective adoptive parents, and a facilitator for the purpose of deciding whether to execute a postadoption sibling contact agreement for a child being adopted out of the child welfare system.

SB 1099 (Steinberg, Ch. 773, Stats. 2014) required the court to consider relationships between dependent and non-dependent siblings, required additional documentation related to sibling relationships in social workers' reports, and authorized a dependent child to request sibling visitation, as specified.

AB 743 (Portantino, Ch. 560, Stats. 2010) made changes to the standards for sibling visitation, interaction, and placement for children in foster care to conform with the federal Fostering Connections to Success Act.

AB 408 (Steinberg, Ch. 813, Stats. 2003) made changes in dependency law to help achieve permanency for older children, including authorizing the court to make orders to ensure that sibling relationships are maintained.

AB 705 (Steinberg, Ch. 747, Stats. of 2001) ensured that sibling relationships are considered at all appropriate hearings and siblings are placed together when appropriate.

AB 1987 (Steinberg, Ch. 909, Stats. 2000) recognized the importance of sibling relationships and required the court to consider the existence, nature, and impact of a dependent child's sibling relationships on the child's placement and planning for legal permanence.

AB 740 (Steinberg, Ch. 805, Stats. 1999) expedited the procedure for permanent placement of a sibling group.

PRIOR VOTES:

Assembly Floor (Ayes 70, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 1)

Assembly Human Services Committee (Ayes 7, Noes 0)

Assembly Judiciary Committee (Ayes 9, Noes 0)
