

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

AB 20 (Gipson)
Version: March 15, 2023
Hearing Date: June 20, 2023
Fiscal: Yes
Urgency: No
AWM

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

The dependency system primarily examines the relationship between a child and their parent or guardian and whether the child is experiencing harm or is at risk of harm due to the parent or guardian's action or inaction. In the last few decades, however, the State has made an increased effort to ensure that children under the jurisdiction of the juvenile court who end up in temporary placements or are permanently adopted do not also lose contact with their siblings. Sibling relationships can be a source of love and stability throughout the dependency and adoption process, and the failure to maintain connections between siblings can add to the already-traumatic experience of being removed from parental custody. This bill furthers the state policy of encouraging sibling contact by allowing 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; adding siblings of nonminor dependents to the list of those required to get notice of hearings to terminate parental rights in dependency court; and requires a county placing agency to convene a meeting for a facilitator to address the possibility of postadoption sibling contact, except in specified narrow circumstances.

Postadoption contact with family may include contact with the parents whose rights have been terminated; existing law recognizes that in some cases 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 meets specified criteria, and for whom the court has determined that adoption is no longer the permanent plan, to petition the court to reinstate parental

rights. 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 expands the circumstances under which a child may so petition for reinstatement or modification of parental rights.

This bill is sponsored by the Children's Law Center of California and is supported by the County of Santa Clara and the National Association of Social Workers - California Chapter. There is no known opposition. If this Committee passes this bill, it will be heard by the Senate Human Services Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) States that the Legislature finds and declares that some adoptive children may benefit from either direct or indirect contact with birth relatives, including the birth parent or parents, siblings, or an Indian tribe, after being adopted, and that postadoption contact agreements are intended to ensure children of an achievable level of continuing contact when such contact is beneficial to the children and the agreements are voluntary. (Fam. Code, § 8616.5(a).)
 - a) A "sibling," for purposes of a postadoption contact agreement, is a person related to the child by blood, adoption, or affinity through a common legal or biological parent. (Fam. Code, § 8616.5(l).)
- 2) Provides nothing in the adoption laws of the state prevent an adopting parent or parents, the birth relatives, or an Indian tribe, and the child, from voluntarily executing a written agreement to permit contact between the birth relatives, as specified, if the court finds that the agreement was executed voluntarily and to be in the best interest of the child at the time the adoption petition is granted. (Fam. Code, § 8616.5(b).)
- 3) Sets forth requirements for postadoption contact agreements, including that the adopted child is considered a party to the postadoption contact agreement and must consent to changes made when the child is 12 years of age or older, and provides that jurisdiction over the enforcement of a postadoption contact agreement for a child who was a dependent of the juvenile court at the time of the adoption, shall be in the court that granted the adoption petition. (Fam. Code, § 8616.5(c)-(f).)
- 4) Establishes procedures for hearings to terminate parental rights or establish the guardianship of a child who is a dependent or ward of the juvenile court, including requiring that the social worker or probation officer give notice of a selection and implementation hearing to specified persons, including the child's mother, presumed and alleged fathers, Indian custodian, and any known sibling, if the

sibling is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. (Welf. & Inst. Code, § 294.)

- 5) Permits a child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the court to reinstate parental rights.
 - a) The child may file the petition prior to the expiration of the three-year period if the Department of Social Services (DSS) or adoption agency that is responsible for custody and supervision of the child and the child stipulate that the child is no longer likely to be adopted.
 - b) A child over 12 years of age shall sign the petition in the absence of good cause showing why they could not do so.
 - c) If it appears that it is in the best interest of the child to reinstate parental rights, the court shall hold a noticed hearing, as specified, and grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement is in the child's best interest.
 - d) If a court 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 guardian, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. (Welf. & Inst. Code, § 366.26(i)(3).)

- 6) Requires, at a review hearing for a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, or for an Indian child for whom parental rights are not terminated and a tribal customary adoption is being considered, the county welfare to prepare and present to the court a report containing specified information about the child, including whether the final adoption order should include provisions for postadoptive sibling contact. (Welf. & Inst. Code, § 366.3(g).)

This bill:

- 1) Expands the availability of continued sibling contact by:
 - a) Clarifying that a postadoption contact agreement with siblings need not be limited to sharing of information.
 - b) Requiring the social worker's report prepared in connection with a review hearing for a child ordered placed for adoption to include the status of a postadoptive sibling contact agreement.
 - c) Requiring a county placing agency, when a child has been ordered placed for adoption, to convene a meeting with a facilitator to discuss a sibling postadoption contact agreement and ensure that all parties are aware of the benefits of such an agreement; if such an agreement is executed, the

- agreement shall be provided to all parties and the court prior to the finalization of the adoption.
- d) Limiting the circumstances in which a county placing agency may decline to hold a meeting on postadoption sibling contact, to situations where the court determines by clear and convincing evidence that sibling interaction is contrary to the safety or wellbeing of the child or where the child informs the court they do not wish to enter into such an agreement.
- 2) Requires, as a prerequisite to the enforcement of a postadoption contact agreement, the court find that the party seeking enforcement participated or attempted to participate in good faith dispute resolution.
 - 3) Requires that a social worker or probation officer provide notice of a selection and implementation hearing to a sibling of the child who is a nonminor dependent and to the child's Court-Appointed Special Advocate, if any.
 - 4) Eliminates the existing provision for the reinstatement of parental rights.
 - 5) Establishes a new framework allowing a child or nonminor dependent to petition the juvenile court to reinstate or modify parental rights, as follows:
 - a) A child or nonminor dependent may file the petition if (1) they have not been adopted after at least three years from the date parental rights were terminated and the court has determined adoption is no longer the permanent plan; (2) they were adopted but parental rights of the adoptive parents have been terminated; (3) they are a nonminor dependent who had exited the juvenile court's jurisdiction and jurisdiction was resumed under specified circumstances; (4) they are an Indian child whose parental rights were modified and who was adopted, but the parental rights of the adoptive parents have been terminated and/or they are in agreement with the modification of parental rights; or (5) they are a nonminor dependent or whom the parental rights of their biological parent or parents were modified by a tribal customary adoption and who was subsequently adopted.
 - b) A qualifying child or nonminor dependent may file a petition to reinstate parental rights before the expiration of the three-year period if DSS or the adoption agency responsible for the child or nonminor dependent stipulates that the child or nonminor dependent is no longer likely to be adopted.
 - c) Authorizes a child over the age of 12 or a nonminor dependent to sign the petition absent a showing of good cause as to why they should not.
 - d) Requires a court to hold a hearing on the petition if it appears that the best interest of the nonminor dependent may be promoted by the reinstatement, with notice provided to specified individuals, including the child or nonminor dependent's attorney of record and tribe, if any.
 - e) For a child who falls under (1)-(3) of 5)(a), the court must grant the petition if it finds by clear and convincing evidence that reinstatement is in the best

- interest of the child or nonminor dependent; for a child who falls under (4)-(5), the juvenile court shall resume dependency jurisdiction to provide the child's or nonminor dependent's tribe an opportunity to modify the tribal customary adoption order.
- f) If a child 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, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights.
 - g) The new section is retroactive and applies to any child or nonminor dependent who was under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.
 - h) A nonminor dependent whose biological parent's or parents' rights have been reinstated pursuant to this section may waive the termination of the parental duties and responsibilities of an existing adoptive parent or parents by signing a waiver at any time prior to the reinstatement of parental rights. The waiver may be included in the petition for reinstatement of parental rights or in a separate writing filed with the court.

COMMENTS

1. Author's comment

According to the author:

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 20 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 or well-being of any sibling. AB 20 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.

2. The dependency system, termination of parental rights, and reinstatement of parental rights

The overarching goal of dependency proceedings is to safeguard the welfare of California's children.¹ Welfare and Institutions Code section 300 sets forth the circumstances that can bring a child within the jurisdiction of the juvenile dependency court. " 'Although the harm or risk of harm to the child [for jurisdictional purposes] must generally be the result of an act, omission or inability of one of the parents or guardians, the central focus of dependency jurisdiction is clearly on the child rather than the parent.' " ²

When a child is found to be under the jurisdiction of the juvenile court, the court is determined to be a dependent of that court and the court may begin proceedings to remove the child from the custody of their parent(s); if, after a series of hearings, a parent is found to be unfit, the court can terminate the parent's parental rights.³ The overarching inquiry is whether the child would suffer, or is likely to suffer, harm if they remain with their parent.

In some cases, however, there may be a need 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.

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.

3. State and federal policy encourage maintaining contact between siblings

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.⁴ Among other things, the Act requires states to

¹ *In re Josiah Z.* (2005) 36 Cal.4th 664, 673.

² *In re R.T.*, 3 Cal.5th 622, 626.

³ See *Welf. & Inst. Code*, §§ 360, 361.3, 366.26.

⁴ P.L. 110-351, 110th Cong. (2007-2008).

use “reasonable efforts” to place siblings together, unless such placement is contrary to their safety or well-being.⁵ If the siblings are not placed together, visitation between them must occur frequently, unless the visitation is contrary to their safety or well-being.⁶

Even before the passage of the Act, California has made it state policy to support and protect sibling relationships when children are under the jurisdiction of the juvenile court and following an adoption.⁷ Since then, California has enacted several additional measures to expand the legal protections for sibling relationships.⁸

4. This bill increases access to sibling contact and expands the right to petition for reinstatement of parental rights

As the Children’s Law Center of California, the sponsor of the bill, notes, “[d]espite existing protections, too often children and nonminors adopted from the child welfare system lose all familial ties.” This bill is intended to help children and nonminor dependents in the dependency system preserve ties with their siblings and, where appropriate, reconnect with their parents after parental rights have been terminated.

The bill makes a number of tweaks to the existing law surrounding postadoption contact agreements relating to siblings. These tweaks include clarifying that a postadoption contact agreement with siblings need not be limited to the sharing of information; requiring a county placement agency to provide a meeting with a facilitator to discuss postadoption sibling contact unless the court finds such a meeting is not in the child’s best interest or the child declines; and requiring the social worker for a child who has been ordered placed for adoption to apprise the court about the status of postadoption sibling contact agreements. The bill also requires that notice of a selection hearing be provided to a child’s sibling if the sibling is a nonminor dependent, thereby making it easier for such siblings to seek out postadoption contact. Overall, these measures should provide greater protections for siblings.

The bill also recasts and revises the current framework for reinstating parental rights that have been terminated or, in certain cases involving Indian children, parental rights that have been modified. These situations either allow the child to have a parent – as opposed to none – or allow the child, in limited situations already recognized today under existing law, to have a legal parent-child relationship with both their adoptive parents and their birth parents. Assuming these are safe relationships for the child – and the court is required to make that determination before reestablishing parental

⁵ 42 U.S.C. § 671(a).

⁶ *Ibid.*

⁷ *E.g.*, AB 1987 (Steinberg, Ch. 909, Stats. 2000); AB 740 (Steinberg, Ch. 805, Stats. 1999).

⁸ *E.g.*, SB 1060 (Leno, Ch. 719, Stats. 2016); AB 1099 (Steinberg, Ch. 773, Stats. 2014); AB 743 (Portantino, Ch. 560, Stats. 2010).

rights – this should avoid the situation where a child is a legal orphan and allow the child to have support and love from at least one family member.

5. Prior similar legislation and response to the Governor’s veto

This bill is virtually identical to a bill introduced by the author last session, AB 1794 (Gipson, 2022). The only differences are (1) this bill retains a provision allowing DSS to inspect and copy an adoption case file in specified instances that AB 1794 would have deleted, and (2) this bill requires a social worker or probation officer provide notice of a selection and implementation hearing to the child’s Court-Appointed Special Advocate, if any.

AB 1794 received an 11-0 vote in this Committee and was passed both houses of the Legislature. Governor Newsom vetoed the bill, however, stating in his veto message:

This bill would provide several paths whereby a foster child or adopted Nonminor dependent may petition for the reinstatement of their biological parent's rights. This bill would additionally require counties to pursue a postadoption sibling contact agreement and facilitate a child and family team meeting in all adoption cases to determine whether the child would benefit from sibling contact.

While I understand the author's intent, there are existing legal pathways for foster children and legal adults to petition for reinstatement of their parents' rights, and additional work is needed to determine if those pathways are insufficient. Additionally, implementation of this bill would likely result in ongoing costs of tens of millions of dollars not accounted for in the budget.

With our state facing lower-than-expected revenues over the first few months of this fiscal year, it is important to remain disciplined when it comes to spending, particularly spending that is ongoing. We must prioritize existing obligations and priorities, including education, health care, public safety and safety-net programs.

The Legislature sent measures with potential costs of well over \$20 billion in one-time spending commitments and more than \$10 billion in ongoing commitments not accounted for in the state budget. Bills with significant fiscal impact, such as this measure, should be considered and accounted for as part of the annual budget process.⁹

⁹ Governor’s veto message to Assem. on Assem. Bill No. 1794 (Sept, 29, 2022), Recess J. No. 10, p. 6792.

As set forth in the Assembly Judiciary Committee's analysis of this bill, the author's response to the veto is as follows:

Respectfully, Children's Law Center of California ("CLC"), as the sponsor of AB 1794 (2022) and AB 20 (2023), disagrees [with the Governor's statement that "there are existing legal pathways for foster children and legal adults to petition for reinstatement of their parents' rights."] Current law . . . allows for the reinstatement of parental rights but only in the very limited circumstance of when a child who has not been adopted after at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan. AB 20 is seeking to expand current law to allow for the reinstatement of parental rights for youth who have been adopted but that adoption has failed/been disrupted prior to the youth turning 21. As counsel for over half of the children and youth in foster care in California, CLC has seen numerous clients be adopted but then through a variety of circumstances, often many years later, that adoptive relationship ends. In some of those situations, the youth has reestablished a connection with their biological parent and wants to have that relationship recognized as it is the only parental relationship remaining in their lives. CLC believes AB 20 provides a much-needed pathway for this small contingent of youth in foster care.

Additionally, Governor Newsom cited cost concerns in his veto of AB 1794. In order to address those concerns, Assemblymember Gipson has submitted a budget ask of \$1 million to support the implementation of AB 20.

6. Arguments in support

According to the County of Santa Clara:

The child welfare system in California is designed to protect the health and safety of children who are subject to, or at risk of, abuse or neglect. The desired outcome is to reunite children with their parents, when appropriate, and to help preserve and strengthen families. Children who are or have been involved in the child welfare system often lose all contact with their birth parents and siblings.

[This] bill will make it easier for siblings to stay in contact with each other, even if one sibling is adopted, and it expands the existing process to petition the juvenile court for reinstatement of parental rights, mainly when the child would otherwise be left without that support.

SUPPORT

Children’s Law Center of California (sponsor)
County of Santa Clara
National Association of Social Workers – California Chapter

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 1650 (Patterson, 2023) among other things, clarifies the timing for when a postadoption contact agreement must be filed with the court in an adoption proceeding. AB 1650 is pending before this Committee.

Prior Legislation:

AB 2845 (Patterson, 2022) would have expanded the use of post-adoption contact agreements to maintain ties between an adopted child and their birth family and specified what a court must consider before ruling on a petition to terminate parental rights. AB 2895 was vetoed by Governor Newsom, whose veto message cited cost concerns as the reason for the veto.

AB 1794 (Gipson, 2022) was substantially similar to this bill and was vetoed by the Governor. See Comment 4 of this analysis for further discussion.

AB 993 (Patterson, 2021) among other things would have modified the potential scope of postadoption contact agreements and required a court in an adoption proceeding to grant postadoption contact privileges unless the court specifically finds that the privileges are not in the best interest of the child. AB 993 died in the Senate Appropriations Committee.

PRIOR VOTES:

Assembly Floor (Ayes 78, Noes 0)
Assembly Appropriations Committee (Ayes 15, Noes 0)
Assembly Human Services Committee (Ayes 7, Noes 0)
Assembly Judiciary Committee (Ayes 11, Noes 0)
