

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

AB 2466 (Cervantes)
Version: June 15, 2022
Hearing Date: June 21, 2022
Fiscal: No
Urgency: No
AWM

SUBJECT

Foster children

DIGEST

This bill prohibits a placing agency, when placing a foster child, from declining to place a child with a resource family because of a resource family's parent's actual or perceived sexual orientation, gender identity, or gender expression; and removes the term "hard to place children" from certain statutes.

EXECUTIVE SUMMARY

California's child welfare system seeks to ensure the safety and protection of children, and where possible, preserve and strengthen families through visitation and family reunification. When a child is removed from their home because of abuse or neglect, it is the state's goal to reunify a foster child or youth with their biological family whenever possible. In instances where reunification is not possible, it is the state's goal to provide a permanent placement alternative, such as adoption or guardianship.

The individuals and families who take children in on a temporary or permanent basis are known as "resource families." These resource families do the essential work of caring for children who have been removed from the custody of their parents or guardians. Over the last ten years, California has moved away from the use of group homes to house these children, making it all the more essential that qualified resource families allowed to serve.

According to the author, despite existing state law prohibiting discrimination in the child welfare system, including against resource families, there are still instances where a resource family is denied a placement because of the sexual orientation or gender identity of the parent(s). This bill is intended to eliminate any question about the state of the law by expressly prohibiting an agency from declining to place a child with a

resource family because of a parent's actual or perceived sexual orientation, gender identity, or gender expression.

Additionally, this bill removes the term "hard to place children" from certain statutes, replacing it as needed with a reference to children entitled to specified federal benefits. This is intended to eliminate stigma against children in the child welfare system.

This bill is sponsored by the author and supported by the County Welfare Directors Association of California, First 5 California, and the National Association of Social Workers, California Chapter. This bill is opposed by the Pacific Justice Institute. This bill passed out of the Senate Human Services Committee with a 4-0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the juvenile court, which has jurisdiction over children who are at substantial risk of harm; the primary purposes of the court are to provide for the protection and safety of the public and each minor under the court's jurisdiction, remove the minor from the custody of their parents only when necessary for their welfare or for the safety of the public; and, when possible, to reunify the minor with their family. (Welf. & Inst. Code, § 202.)
- 2) Provides that it is the intent of the Legislature to preserve and strengthen a child's family ties whenever possible, removing the child from the custody of their parents only when necessary for their welfare or for the safety and protection of the public; and where it is necessary to remove a child from their family, the child should be given as nearly as possible the custody, care, and discipline equivalent to that which should have been given to the child by their parents, and, wherever possible, a permanent placement. (Welf. & Inst. Code, § 16000.)
- 3) Requires the state, through the Department of Social Services (CDSS) and county welfare departments, to establish and support a public system of statewide child welfare services to be available in each county of the state, and for all counties to establish and maintain specialized organizational entities within the county welfare department which shall have sole responsibility for the operation of the child welfare services program. The Legislature declares, in providing for the system of statewide child welfare services, that all children are entitled to be safe and free from abuse and neglect. (Welf. & Inst. Code, § 16500.)
- 4) Defines a "resource family" as an individual or family that has successfully met both the home environment assessment standards and the permanency assessment criteria necessary for providing care for a child placed by a public or private child

placement agency by court order, or voluntarily placed by a parent or legal guardian, and meets demonstrates all of the following:

- a) An understanding of the safety, permanence, and well-being needs of the children who have been victims of child abuse and neglect, and the capacity and willingness to meet those needs, including the need for protection, and the willingness to make use of support resources offered by the agency, or a support structure in place, or both.
 - b) An understanding of children's needs and development, effective parenting skills or knowledge about parenting, and the capacity to act as a reasonable, prudent parent in day-to-day decisionmaking.
 - c) An understanding of the role of the individual or family as a resource family and the capacity to work cooperatively with the agency and other service providers in implementing the child's case plan.
 - d) The financial ability within the household to ensure the stability and financial security of the family. This requirement may be waived for a relative and nonrelative extended family member resource families on a case-by-case basis; and there is no minimum income requirement, and reliance on specified funding sources shall not be the basis for denial of approval as a resource family.
 - e) An ability and willingness to provide a family setting that promotes normal childhood experiences that serves the need of the child. (Welf. & Inst. Code, § 16519.5(c)(1).)
- 5) Requires CDSS, in consultation with county child welfare agencies, foster parent associations, and other interested community parties, to implement a unified, family-friendly, and child-centered resource family approval process to replace the existing multiple processes for licensing foster family homes, certifying foster homes by licensed foster family agencies, approving relatives and nonrelative extended family members as foster care providers, and approving guardians and adoptive families. (Welf. & Inst. Code, § 16519.5(a).)
 - 6) Pursuant to 5), requires CDSS to implement a unified, family-friendly, and child-centered resource family approval process to replace the prior processes for licensing foster family homes, certifying foster homes by licensed family agencies, approving relatives and nonrelative extended family members as foster care providers, and approving guardians and adoptive families. (Health & Saf. Code, § 1517(a)(1).)
 - 7) Provides that there is no fundamental right to approval as a resource family. (Health & Saf. Code, § 1517(a)(3).)
 - 8) Establishes requirements for foster family agencies, including requirements relating to the approval or denial of resource family applications. (Health & Saf. Code, § 1517(b).)

- 9) Provides that it is the policy of this State that all persons engaged in providing care and services to foster children, including, but not limited to, foster parents, adoptive parents, relative caregivers, and other caregivers contracting with a county welfare department shall have fair and equal access to all available programs, services, benefits, and licensing processes, and shall not be subject to discrimination or harassment on the basis of their clients' or their own actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. These provisions do not create or modify existing preferences for foster placements or limit the local placement agency's ability to make placement decisions for a child based on the child's best interests. (Welf. & Inst. Code, § 16013.)
- 10) Requires CDSS, in consultation with county placement agencies, foster care providers, and other interested community parties, to establish criteria to be used for conducting a comprehensive home study of a licensed or foster parent that evaluates the ability, readiness, and willingness of the licensed foster parent to meet the various needs of children, including, but not limited to, hard-to-place children. (Welf. & Inst. Code, § 16518.)

This bill:

- 1) Prohibits a placing agency from declining to place a child with a resource family because of a resource family parent's actual or perceived sexual orientation, gender identity, or gender expression.
- 2) Removes statutory references to "hard to place children," and, in the context of appropriations, replaces the term with a reference to children who are eligible for specified types of financial assistance.

COMMENTS

1. Author's statement

According to the author:

It is essential to consider that the nation's foster care system has been especially overwhelmed by the coronavirus pandemic.

Assembly Bill 2466 will explicitly prohibit placing agencies from declining to place a child with a resource family because a resource family parent identifies as LGBTQ+ when placing foster children. Assembly Bill 2466 also eliminates the use of "hard-to-place children" no child should be labeled a "hard-to-place child." No child is difficult to love or care for.

AB 2466 will help ensure that we continue to develop standard practices throughout the state regarding LGBTQ+ prospective foster home parents. We need to continue to challenge stereotypes about who can foster. Although more public and private agencies have created supportive practices while also recruiting LGBTQ+ families, some agency policies and professional biases continue to present obstacles for some LGBTQ+ individuals and couples interested in pursuing foster care.

Misinformation and inexperience in working with LGBTQ+ families prevent many child welfares and foster care professionals from providing meaningful services to foster care families who identify as LGBTQ+. LGBTQ+-related stigma undermines placement stability; it is our responsibility to ensure that the **over 60,000** children in the foster care system are placed in nurturing foster homes. Not doing so is harmful to our foster children and unfair to the LGBTQ+ families who are well-equipped to care for them.

2. This bill eliminates the term “hard-to-place children” from certain statutes and prohibits discrimination against resource families based on the sexual orientation, gender identity, or gender expression of the resource parent

In the 2010s, California embarked on a project to improve its placement and treatment options for children in foster care. In 2012, the Legislature enacted SB 1013 (Committee on Budget and Fiscal Review, Ch. 35, Stats. 2012), which called for CDSS to establish a working group to develop recommended revisions to the current rate-setting system, services, and programs serving children and families in the continuum of foster care settings. CDSS’s resulting report, “California’s Child Welfare Continuum of Care Reform,” published in 2015, outlined a comprehensive approach to improving California’s child welfare system by reforming the system of placements and services directed at youth in foster care.¹ AB 403 (Stone, Chap. 773, Stats. 2015), sponsored by CDSS, implemented many of the continuum of care reforms (CCR) to improve outcomes for children and youth with measures to ensure that foster youth have their day-to-day physical, mental, and emotional needs met, have the opportunity to grow up in permanent and supportive homes, and have the opportunities necessary to become self-sufficient and successful adults. CCR also sought to reduce the use of congregate care as a frequently used placement option for youth. Additional CCR reforms were implemented in legislation in the following years, including eliminating the group home licensure category and replacing them with new Short Term Residential Therapeutic Programs.²

Resource families, previously referred to as foster parents, play a critical role in the child welfare system to assist in the life of foster children, particularly under CCR. A

¹ California Health and Human Services Agency & CDSS, *California’s Child Welfare Continuum of Care Reform* (Jan. 2015).

² See Prior legislation, *infra*.

resource family is a caregiver who provides out-of-home care for children in foster care. Resource families can include individuals, couples, and families who may be related to, have a familiar or mentoring relationship with, or no previous relationship with the child. They are approved to provide care on a temporary (foster care) and/or permanent (adoption and legal guardianship) basis. Resource families work together with child welfare services and the child's family to provide for the needs of the child and, when appropriate, facilitate family reunification, and provide a child with a feeling of safety, permanence, and well-being. Resource families also facilitate the implementation of CCR by allowing additional children to be placed in committed, nurturing family-based settings instead of congregate care facilities.

Current law already provides that

[I]t is the policy of the State that all persons engaged in providing care and services to foster children, including foster parents shall have fair and equal access to all available programs, services, benefits, and licensing processes, and shall not be subject to discrimination or harassment on the basis of their clients' or their own actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.³

According to the author, however, there are still reports of foster parents being denied a placement on the basis of their perceived sexual orientation, gender identity, or gender expression (whether accurate or based on assumptions by the placing agency). While this appears to violate current law, this bill is intended to eliminate any doubt over whether a placing agency can discriminate against a potential foster parent or family on these bases.⁴

This bill also removes statutory references to "hard to place children," replacing the term, where necessary, with a reference to children who receive financial assistance under specified federal programs. There does not appear to be a reason to call out certain children as hard to place, and the author believes that removing the term will reduce stigma against children.

³ Welf. & Inst. Code, § 16013.

⁴ The Pacific Justice Institute – Center for Public Policy, in opposition to the bill, suggests that *other* foster parents will drop out if placing agencies are no longer permitted to discriminate against foster parents on the basis of sexual orientation, etc. Given that California already prevents discriminating against foster children on the basis of sexual orientation, gender identity, and gender expression, and that there are already numerous LGBTQ+ foster parents, it is difficult to understand how this could be what causes these hypothetical foster parents to exit the system. (*See* Welf. & Inst. Code, § 16001.9(a)(4).)

3. Constitutional considerations

The Pacific Justice Institute – Center for Public Policy, writing in opposition, argues that this bill will create an unconstitutional infringement on certain placement agencies' rights under the Free Exercise of the First Amendment of the United States Constitution.⁵ Specifically, they argue that this bill's prohibition on discriminating against resource parents on the basis of their sexual orientation or gender identity violates the rights of religious-based placement agencies, as already prohibited in *Fulton v. City of Philadelphia*.⁶

In any event, *Fulton* is easily distinguishable from the anti-discrimination provision in this bill. In *Fulton*, the City of Philadelphia refused to renew a foster care contract with a Catholic agency unless the agency agreed to certify same-sex couples for foster placements.⁷ The contract in question was not, however, a general law of neutral applicability, but rather was subject to a discretionary provision that allowed the city's agents to make exceptions to the rule – which it failed to do for the agency in question.⁸ As such, that specific refusal to accommodate the agency was reviewed under strict scrutiny rather than as a general antidiscrimination law.⁹

AB 2466, by contrast, brooks no exceptions. It is a blanket statement that no placement agency in the state can decline to place a child with a resource family because of the resource parent's actual or perceived sexual orientation, gender identity, or gender expression.¹⁰ The state is still empowered to pass general anti-discrimination laws that apply across the board,¹¹ and this bill does just that.

4. Arguments in support

According to the California Chapter of the National Association of Social Workers:

This bill will help ensure the continuation of developing standard practices throughout the state regarding LGBTQ+ prospective resource parents. There is a need to continue to challenge stereotypes about who can foster. Even though more public and private agencies have created supportive practices while also recruiting LGBTQ+ families, some agency policies and professional biases

⁵ See U.S. Const., 1st amend.

⁶ See *Fulton v. City of Philadelphia* (2021) 141 S.Ct. 1868, 1882.

⁷ *Id.* at p. 1874.

⁸ *Id.* at pp. 1881-1882.

⁹ *Id.* at p. 1881.

¹⁰ An earlier version of this bill prohibited discrimination on the basis of certain categories of sexual orientation and gender identity. It was not the author's intent to create a two-tiered regime of anti-discrimination laws, and the author accepted amendments in the Senate Human Services Committee to clarify the general anti-discriminatory intent.

¹¹ See *Employment Div. v. Smith* (1009) 494 U.S. 872, 878-890.

continue to present obstacles for some LGBTQ+ individuals and couples interested in pursuing foster care.

In addition, this bill will remove the term “hard to place” which often refers to children over the age of four, boys, disabled children or children with exceptional needs, children of color, sibling groups, or LGBTQ+ children. Its use has caused barriers to foster placement or adoption. This bill would update the terminology by removing various references to “hard to place” children in statute.

It is imperative for the state of California to send a clear message that discrimination in its many forms will not be accepted. Specifically in this case, sexual orientation is not made a part of the criteria for one to become a resource parent. There are many children in need of a loving and supportive home in the process of reunification or adoption; let’s not deprive the children of a loving home by reducing the number of people who are willing, trained and certified to provide a loving home for children in need. It is also important to take into account that, the foster care system has been especially overwhelmed by the coronavirus pandemic.

5. Arguments in opposition

According to the Pacific Justice Institute – Center for Public Policy:

We agree with the author that the placement of foster children in loving homes continues to be a major challenge, as it is in the rest of the nation. But AB 2466 would only exacerbate the problem. It would do so by eliminating many qualified families from faith traditions which continue to respectfully disagree with the political objectives of LGBTQ advocacy groups. Indeed, AB 2466 would exclude many families with no faith tradition who simply share the widespread, millennia-old understanding of human biology and skepticism toward more recent approaches such as administering hormones to children to address gender dysphoria...

AB 2466 is driven by ideology, not evidence. And it will only serve to drive more loving families away from the foster system at a time when they are most needed. It is highly likely to be invalidated by the courts and needlessly cost taxpayers as the Attorney General’s office attempts to defend this indefensible Bill [*sic*]. In the meantime, families will be deterred from engaging with a system that seems focused on promoting special interests over the interests of children.

SUPPORT

County Welfare Directors Association of California

First 5 California

National Association of Social Workers, California Chapter

OPPOSITION

Pacific Justice Institute

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 354 (Skinner, Ch. 687, Stats. 2021) adopted changes to the criminal background check process during the resource family approval (RFA) process for relatives of children placed in the child welfare system; permitted the court to authorize placement of children with relatives in certain circumstances, regardless of the status of any criminal exemption or RFA; and required, no later than January 1, 2024, the CDSS to submit a report to the Legislature related to criminal record exemptions as specified.

AB 366 (Blanca Rubio, Ch. 581, Stats. 2021) made various changes to resource family approval requirements to increase a county agency's ability to place siblings together, including allowing certain capacity and financial condition requirements to be waived.

AB 819 (Stone, Ch. 777, Stats. 2020) modified various statutes to further CCR as it relates to the flexibility for and exclusions to resource family homes and the provision of intensive services foster care (ISFC), expanded out-of-state provider background checks, increased financial resources available to Tribally approved homes, aligned state and federal mandated reporter laws, authorized group home staff to administer emergency injections, and extended the date of final implementation of the CCR rate structure.

AB 2083 (Cooley, Ch. 815, Stats. 2018) stated the legislative intent to build on existing CCR measures by, among other things, developing a coordinated, timely, and trauma-informed system-of-care approach for children and youth in foster care who have experienced severe trauma, and required each county to develop and implement a memorandum of understanding setting forth the roles of agencies and other entities serving foster children and youth who have experienced severe trauma.

AB 404 (Stone, Ch. 732, Stats. 2017) made various changes to clean up elements of AB 403 (Stone, Ch. 773, Stats. 2015), which implemented CCR to reduce the reliance on long-term congregate foster care placements by: establishing Intensive Services Foster Care for children with high needs; creating an option to license respite caregivers; defining outcome requirements for Foster Family Agencies; and making various

changes to the RFA process, including the means to transfer a resource family approval, remove a resource family from inactive status, and appeal a denied application.

AB 1997 (Stone, Ch. 612, Stats. 2016) implemented additional CCR recommendations from CDSS relating to the licensure of foster homes and residential treatment centers for children.

AB 403 (Stone, Ch. 773, Stats. 2015) implemented a number of CCR recommendations from CDSS relating to mental health care in the foster care system.

PRIOR VOTES:

Senate Human Services Committee (Ayes 4, Noes 0)

Assembly Floor (Ayes 66, Noes 0)

Assembly Human Services Committee (Ayes 8, Noes 0)
