

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Corey A. Jackson, Chair

AB 20 (Gipson) – As Amended March 15, 2023

SUBJECT: Postadoption contact agreements: reinstatement of parental rights

SUMMARY: Expands the instances that allow for youth, upon change of circumstance or new evidence, to petition the court to seek the reinstatement of parental rights when youth have been adopted, but that adoption has failed. Revises various provisions related to postadoptive sibling contacts, and makes other conforming changes. Specifically, **this bill:**

- 1) Adds nonminor dependents (NMDs) to the existing circumstances allowing a child to petition the juvenile court to reinstate or modify parental rights and requires the juvenile court to grant the petition if it finds by clear and convincing evidence that reinstatement of parental rights is in the child's or NMD's best interest.
- 2) Adds the following descriptions that would allow a child or NMD to petition the juvenile court to reinstate or modify parental rights:
 - a) A child for whom the parental rights of their biological parent(s) were terminated, who was subsequently adopted, and for whom the parental rights of their adoptive parent(s) have been terminated;
 - b) An NMD for whom the court assumed dependency jurisdiction based on a petition filed as a nonminor who received adoption assistance payments after turning 18 years old, and their adoptive parent(s) either no longer provide support, or died, after the nonminor turned 18 years old, but before they turned 21 years old;
 - c) An Indian child, as defined, for whom the parental rights of their biological parent(s) were modified by a tribal customary adoption, who was subsequently adopted, and for whom the parental rights of their adoptive parent(s) have been modified or terminated, or who are in agreement with the modification of parental rights;
 - d) An NMD for whom the parental rights of their biological parent(s) were modified by a tribal customary adoption and who was subsequently adopted.
 - e) Requires, for a child or NMD described in c) and d) above, the juvenile court to resume dependency jurisdiction to provide the child's or NMD's tribe an opportunity to modify the tribal customary adoption order and for the juvenile court to grant the modified tribal customary adoption order full faith and credit when the tribe files as provided in existing law.
- 3) Adds NMD siblings of the child who is the subject of the hearing to terminate parental rights, and their Court-Appointed Special Advocate, if one is appointed, to the list of people the social worker or probation officer are required to notify regarding the hearing.

- 4) Expands the postadoption contact agreement with siblings of a child by not limiting the contact only to sharing information about the child, even if the siblings do not have a pre-existing relationship.
- 5) Permits an NMD whose biological parent(s)' rights have been reinstated pursuant to these provisions, to waive the termination of the parental duties and responsibilities of existing adoptive parent(s) by signing a waiver at any time prior to the reinstatement of parental rights. Allows the waiver to be included in the petition for reinstatement of parental rights or in a separate writing filed with the court.
- 6) Requires, at the six-month court review regarding a child for whom the court has ordered parental rights terminated, or, for an Indian child for whom parental rights are not being terminated and a tribal customary adoption is being considered, the county welfare department to include a description in the court report, if applicable, the status of the postadoptive sibling contact agreement.
- 7) Requires the county placing agency to convene a meeting with the child, the sibling or siblings of the child, the prospective adoptive parent(s), and a facilitator to discuss a postadoption sibling contact agreement within 90 days after termination of parental rights and prior to finalization of the adoption, unless either of the following occur:
 - a) The court, at the hearing to terminate parental rights, after considering the recommendation, if any, of the county placing agency, determines by clear and convincing evidence that sibling interaction is contrary to the safety or well-being of the child; or,
 - b) A child being placed for adoption informs the court that they do not wish to enter into a postadoption sibling contact agreement.
- 8) Requires the facilitator to ensure that all parties are aware of the benefits of postadoption contact between siblings, the spectrum of postadoption contact options, and the requirements under existing law related to the disclosure of information of siblings to one another.
- 9) Stipulates that compliance with, and enforceability of, an executed postadoption sibling contact agreement shall be subject to existing law and, requires, if a postadoption contact agreement is executed, the agreement to be provided to all parties and to the court prior to the finalization of the adoption.

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. (Family Code Section [FAM] 8616.5(a))
- 2) 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. (FAM 8616.5(b))

- 3) 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 postadoption 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 8616.5(b)(e))
- 4) 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 7612)
- 5) 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 8617)
- 6) Governs the disclosure of information to siblings who have been adopted to one another if both of the siblings are at least 18 years old and have filed a request with either the California Department of Social Services (CDSS), a county adoption agency, or licensed adoption agency that joined in the adoption petition (FAM 9205)
- 7) 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 9306)
- 8) Requires, pursuant to federal law, states to use “reasonable efforts” to place siblings in the child welfare system together, unless such placement is contrary to their safety or well-being. If siblings are not placed together, requires visitation between them to occur frequently, unless it is contrary to their safety or well-being. (42 United States Code Section [USC] 671(a)(31))
- 9) States that legislative intent to 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, 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. (Welfare & Institutions Code Section [WIC] 16002(a))
- 10) Requires the county adoption agency or CDSS, 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; and,
 - 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. (WIC 16200(e))
- 11) 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. (WIC 366.29)
 - 12) Requires a social worker, where possible and appropriate, to place a child who has been removed from their parents or guardian 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. (WIC 306.5)
 - 13) 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 NMD, to petition the juvenile court to assert a sibling relationship of a child or NMD (WIC 362.1)
 - 14) 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. (WIC 366.26 (i)(1))
 - 15) 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 CDSS, 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. If the 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 legal guardian, requires the court to specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. Provides that this is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated. (WIC 366.26 (i)(3))

- 16) Allows parents, interested persons, and children or NMDs to petition the juvenile court to modify an order issued in a dependency case based on a change of circumstances. (WIC 388.)
- 17) Allows a nonminor who has not turned 21 years old to petition the court in which they were previously found to be a dependent or delinquent child of the juvenile court, for a hearing to determine whether to assume dependency jurisdiction over the nonminor, if they meet specified descriptions, including: they are a nonminor who received adoption assistance payments after turning 18 years old and their adoptive parent died after the nonminor turned 18 years old, but before they turned 21 years old; or, they are a nonminor who received adoption assistance payments after turning 18 years old, and their adoptive parent no longer provides ongoing support to, and no longer receive benefits on behalf of, the nonminor after the nonminor turned 18 years old, but before they turned 21 years old. (WIC 388.1(a))
- 18) 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. (WIC 366.24)

FISCAL EFFECT: Unknown. This bill has not been analyzed by a fiscal committee.

COMMENTS:

Background: *Child welfare services.* California's child welfare services system exists to protect children from abuse and neglect, and in doing so, to provide for their health, safety, and overall well-being. When suspicions of abuse or neglect arise, often as a result of a report by a mandated reporter like a healthcare provider or teacher, Child Protective Services is tasked with investigating the report. If the allegation of abuse or neglect is substantiated, it is then determined whether it is in the best interest of the child to remain in their parent's custody or be placed within the child welfare services system. If a child is suspected to be at risk of neglect, abuse, or abandonment, the juvenile court holds legal jurisdiction, and the child welfare services system appoints a social worker to ensure that the needs of a youth are met.

California's child welfare services programs are administered by the 58 individual counties with each county organizing and operating its own program of child protection based on local needs while adhering to state and federal regulations. When a child welfare case is open, counties are the primary governmental entity interacting with children and families when addressing issues of child abuse and neglect and are responsible, either directly or through providers, for obtaining or providing the interventions and relevant services to protect children and assist families with issues related to child abuse and neglect.

CDSS secures federal funding to support child welfare services programs, provides statewide best practices training for social workers, and conducts program regulatory oversight and administration, and is responsible for the development of policy while also providing direct services such as adoption placements.

As of January 1, 2023, there are 52,265 youth between birth and up to 21 years old in foster care.

Dependency court. Children who have been removed from the custody of their parents are temporarily placed within the jurisdiction of the juvenile dependency court and therefore the child welfare system, pending a decision regarding their health and safety. Within 48 hours of removing a child from their parent's custody, a social worker is required to file a petition with the court requesting a detention hearing be conducted in order to determine whether further detention of the child is warranted. If the social worker petitions to declare the child a dependent of the court, current law requires that the detention hearing be held within 48 hours of the petition being filed.

One of the goals of the juvenile court is to maintain familial ties whenever possible, as demonstrated by the provision of family maintenance and reunification services, conducting searches for able and willing relatives to serve as placement options for youth placed in the custody of the juvenile court, and prioritizing placement with relatives and nonrelative extended family members as caregivers.

Current law states that any order of the court permanently terminating parental rights is conclusive and binding upon the child and the parents, and that after making the order, the juvenile court does not have power to set aside, change, or modify it, except in a tribal customary adoption order.

However, current law does allow a child who has not been adopted after three years (or sooner if CDSS or the adoption agency agree) from the date parental rights were terminated, and for whom the court has determined that adoption is no longer the permanent plan, to petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by WIC 388. This procedure allows parents, interested persons, and children or NMDs to petition the juvenile court to modify an order issued in a dependency case based on a change of circumstances. Current law also allows youth between the ages of 18 and 20 to petition the court in which they were previously found to be a dependent or delinquent child, for a hearing to determine whether to assume dependency jurisdiction over the nonminor, if they meet specified descriptions.

This bill would create additional circumstances pursuant to the procedure described by WIC 388 for the biological parental rights to be reinstated for certain youth and NMDs. These additional circumstances would only apply to a narrow set of youth whose adoptions have failed, and upon the change of circumstance or new evidence, would be allowed to petition the court for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. Additionally, the juvenile court would only grant the petition if it finds by clear and convincing evidence that reinstatement of parental rights is in the youth's best interest.

Foster youth and sibling relationships. The importance of maintaining relationships between siblings who have been separated from each other due to involvement with the child welfare system is well-recognized. According to the Child Welfare Information Gateway, "Sibling relationships are emotionally powerful and critically important not only in childhood but over the course of a lifetime. As children, siblings form a child's first peer group, and they typically spend more time with each other than with anyone else. Children learn social skills, particularly in sharing and managing conflict, from negotiating with brothers and sisters. Sibling relationships can provide a significant source of continuity throughout a child's lifetime and are likely to be the longest relationships that most people experience."

The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351) was the first recognition in federal law of the importance of keeping siblings together, and it required states to make reasonable efforts to maintain sibling connections, stating that reasonable efforts shall be made:

- 1) “To place siblings removed from their home in the same foster care, kinship, guardianship, or adoptive placement, unless the State documents that such a joint placement would be contrary to the safety or well-being of any of the siblings; and,
- 2) In the case of siblings removed from their home who are not so jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless the state documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.” (42 U.S.C. 671(a)(31))

Current law requires a social worker, to the extent that it is practical and appropriate, to place a minor together with any siblings or half-siblings who are also detained or include in the case report a statement of their continuing efforts to place the siblings together or why those efforts are not appropriate.

Postadoption contact agreements. State law recognizes the benefits often derived from adoptive children having either direct or indirect contact with birth relatives after being adopted, and provides for the development of postadoption contact agreements. These agreements are intended to establish ongoing contact between a child who has been adopted and their birth relatives; they are voluntarily entered into by birth relatives and adoptive parents. The purview of these agreements is limited to, but does not need to include, provisions for visitation, future contact, and sharing of information about the child in the future.

Currently, the terms of any postadoption contact agreement with birth relatives, other than the child’s birth parent, including siblings, is limited to the sharing of information about the child, unless a pre-existing relationship exists. During the court reviews that occur at least every six months regarding a child whose parental rights have been terminated and who has been ordered placed for adoption, counties are required to include in their court report whether the final adoption order should include provisions for postadoptive sibling contact.

This bill would expand the postadoption contact agreement with siblings of a child by not limiting the contact only to sharing information about the child, even if the siblings do not have a pre-existing relationship, and would require counties to include a description in the court report, if applicable, of the status of the postadoptive sibling contact agreement.

It is the intent of the Legislature to maintain the continuity of the family unit, and ensure the preservation and strengthening of the child’s family ties by ensuring that when siblings have been removed from their home, either as a group on one occurrence or individually on separate occurrences, for the siblings to be placed together, unless it has been determined that placement together is contrary to their safety or well-being. It is also the intent of the Legislature to preserve and strengthen a child’s sibling relationship so that when a child has been removed from the home and has siblings who remain with a parent, 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.

Existing law requires counties, to the extent practicable, to convene a meeting with the child, the siblings of the child, the prospective adoptive parents, and a facilitator for the purposes of deciding whether to voluntarily execute a postadoption sibling contact agreement on a date after termination of parental rights and prior to finalization of the adoption.

This bill would instead require counties to convene these same meetings in all instances to discuss a postadoption sibling contact agreement within 90 days after termination of parental rights and prior to finalization of the adoption, unless the court, at the hearing to terminate parental rights determines by clear and convincing evidence that sibling interaction is contrary to the safety or well-being of the child or the child being placed for adoption informs the court that they do not wish to enter into a postadoption sibling contact agreement. The bill also requires the facilitator to ensure that all parties are aware of the benefits of postadoption contact between siblings, the spectrum of postadoption contact options, and the requirements under existing law related to the disclosure of information of siblings to one another. The bill further requires, if a postadoption contact agreement is executed, the agreement to be provided to all parties and to the court prior to the finalization of the adoption.

Author's Statement: 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. [This bill] 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. [This bill] 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."

Need for this bill: The provisions of this bill seek to ensure that foster youth who have been adopted have access to their biological siblings by allowing a postadoption contact agreement to include contact with siblings, even if the siblings do not have a preexisting relationship. This bill also allows for the reinstatement of parental rights for those who wish to re-establish a relationship with their biological parents when it appears to be in the best interest of the child or NMD, by establishing additional circumstances that could be addressed within the juvenile court.

Equity Impact: Foster youth disproportionately are low-income when compared to their non-foster youth peers. The vast majority of children who are placed in California's foster care system have been removed from low-income households, roughly half of them living below the federal poverty level. The average annual income of foster youth age 18 to 21 was \$9,740, placing them well below the federal poverty line. This bill could potentially allow a youth to benefit from access to their parent's income by having their parental rights reinstated.

Studies conducted by Chapin Hall, an independent policy research center at the University of Chicago, report children placed with family have better behavioral and mental health outcomes than their peers in traditional foster care. Children in kinship care, which is broadly defined as relatives or close family friends, have fewer placements and school changes and are less likely to

run away from home than children in traditional foster care. They are more likely to report that they “always felt loved” and have higher satisfaction with kin placement. By expanding the circumstances that would allow a youth to have their parent’s rights reinstated, they could benefit from the positive outcomes that have traditionally come from family placements.

According to the Legislative Analyst Office (LAO) in a March, 2022 publication, the proportions of Black and Native American youth in foster care are around four times larger than the proportions of Black and Native American youth in California overall. In addition, recent research on cumulative child welfare involvement of California’s 1999 birth cohort found nearly one in two Black and Native American children experienced some level of child welfare involvement by the time they turned 18 (compared to around 29% of Latino children, 22% of White children, and 13% of Asian/Pacific Islander children). This bill would allow foster youth to return to their biological family, thereby reducing some of the racial disproportionality that exists in the child welfare system.

This bill would allow youth, upon the change of circumstance or new evidence, to petition the court to seek the reinstatement of parental rights when youth have been adopted, but that adoption has failed. By providing additional pathways for youth to reinstate parental rights, if the court finds that it is in the best interest of the youth, families can be reunited, and some of the disproportionality that exists throughout the child welfare system can begin to be addressed by removing barriers to family reunification.

Double referral: This bill passed out of the Assembly Judiciary Committee on March 14, 2023, with an 11-0 vote.

RELATED AND PRIOR LEGISLATION:

AB 1794 (Gipson), of 2022, was similar to this bill, but was vetoed by Governor Newsom for ongoing costs in addition to questioning whether the existing pathways foster children and legal adults have to petition for reinstatement of their parents' rights are insufficient.

SB 1060 (Leno), Chapter 719, Statutes of 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.

AB 743 (Portantino), Chapter 560, Statutes of 2010, made changes to the standards for sibling visitation, interaction, and placement for children who are placed out-of-home, in foster care, or adoption, to conform with language in the federal Fostering Connections Act, and required placing agencies to notify a dependent child’s attorney of placements and changes in placement, as specified.

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

AB 1987 (Steinberg), Chapter 909, Statutes of 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), Chapter 805, Statutes of 1999, expedited the procedure for permanent placement of a sibling group.

REGISTERED SUPPORT / OPPOSITION:

Support

Children's Law Center of California (Sponsor)
California Tribal Families Coalition
National Association of Social Workers, California Chapter

Opposition

None on file

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