

Date of Hearing: June 26, 2012

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Jim Beall Jr., Chair
SB 1064 (De Leon) – As Amended: April 16, 2012

SENATE VOTE: 28-7

SUBJECT: Immigration: Child Custody and Child Welfare Services

SUMMARY: Prohibits the use of a person's immigration status from being taken into account when reunification services are provided to parents or relatives of children who have been removed from the home when the parent has been detained or deported by federal immigration authorities. Establishes a process by which documents from a person's country of origin may be used for purposes of a background check. It also requires the Department of Social Services (DSS) to provide counties guidance and technical assistance in the identification and provision of services for children in the child welfare system whose parents have been detained or deported by federal immigration authorities. Specifically, this bill:

- 1) Allows a parent, legal guardian, or relative, regardless of immigration status to be granted custody, as long as it is in the best interest of the child.
- 2) Allows a relative to file a petition for appointment or be appointed as a guardian regardless of their immigration status.
- 3) Allows a social worker to release a child into the temporary custody of the child's parent, guardian or relative, regardless of immigration status.
- 4) Allows a relative's foreign passport or identification card from a foreign consulate to be considered a valid form of identification to conduct a criminal background check for the purposes of determining the lawful and appropriate temporary custody placement of a child.
- 5) Allows a social worker, by order of the court, to place a child with a parent regardless of their immigration status, when the child has been deemed a ward or dependent of the court.
- 6) Includes for purposes of preferential placement consideration the child's relative regardless of the relative's immigration status, when the child has been deemed a ward or dependent of the court.
- 7) Allows a relative or guardian's foreign passport or identification card from a foreign consulate to be considered a valid form of identification to conduct a criminal background check for the purposes of determining the lawful and appropriate placement of a child.
- 8) Allows a court to extend by six months, from 12 to 18, the amount of time that reunification services can be provided if it is found that the parent has been detained or deported by the United States Department of Homeland Security (DHS).

- 9) Exempts a parent detained or deported by DHS from being required to participate in court ordered counseling or other treatment services for the purposes of facilitating reunification with the child.
- 10) Directs the court, to the extent possible, to make reasonable efforts to assist parents who have been deported to contact child welfare authorities in their country of origin, to identify any available services that would substantially comply with case plan requirements, to document the parents' participation in those services, and to accept reports from local child welfare authorities as to the parents' living situation, progress, and participation in services.
- 11) Requires the child's supervising agency or the overseeing adoption agency to provide information to the caregiver, regardless of their immigration status, information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.
- 12) Allows the court to extend by six months the permanency review hearing, held 12 months after the disposition of the child, if the parent has been detained or deported by DHS and the court determines that either the parent has made reasonable efforts to regain custody of the child or that termination of parental rights would be detrimental to the child, as specified.
- 13) Requires the court to take into consideration whether to hold a permanency hearing for a child who was under three years of age at the time of removal from the home or is a member of a sibling group, as defined, if the parent's detention by DHS would present a barrier to their inability to maintain contact with his or her child.
- 14) Requires the court to continue a subsequent permanency review hearing by six months, provided that the hearing occurs within 24 months of the child being removed from the home, if the court finds it substantially probable that the child will be returned to the custody of their parents and the parents are discharged from DHS detention or return to the United States following their deportation to their country of origin.
- 15) Requires information, to the extent possible, to be included in a child's child welfare case plan if reunification services were being provided during the parent's detention or prior to their deportation to their country of origin.
- 16) Requires DSS to provide guidance to counties and municipalities on the establishment of a memoranda of understanding with the appropriate foreign consulates for child custody cases in which a parent has been arrested and issued an immigration hold, has been detained by the United States Department of Homeland Security, or has been deported to his or her country of origin, no later than July 1, 2013, as specified.
- 17) Requires DSS to provide guidance to counties and municipalities detailing procedures for social workers to assist children in child custody and dependency cases to apply for special immigrant juvenile status under federal law before they turn 21 years of age or get married.

EXISTING LAW

- 1) States that the purpose of foster care law is to provide maximum safety and protection for children who are currently being physically, sexually, emotionally abused, neglected, or

exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm.

- 2) States the intent of the Legislature to preserve and strengthen a child's family ties whenever possible and to reunify a foster youth with their biological family whenever possible, or to provide a permanent placement alternative, such as adoption or guardianship.
- 3) Allows a juvenile court to adjudge a child a ward or a dependent of the court for specified reasons, including but not limited to if the child has been left without any provision for support, as specified.
- 4) Establishes a state and local system of child welfare services, including foster care, for children who have been adjudged by the court to be at risk or have been abused or neglected, as specified.
- 5) Establishes a process for the identification and placement of a ward or dependent of the court with a parent, relative or extended relative or other form of guardianship.
- 6) Requires all adults caring for or living with a foster youth to undergo a criminal background check and precludes the Director of DSS from allowing any foster youth to be placed with individuals convicted of certain crimes, as specified.
- 7) Places eligibility conditions upon individuals who may serve as a guardian over a ward or dependent of the court.
- 8) Requires the courts to conduct review and permanency hearings for youth in the child welfare system and to take into consideration the reasons for the child's circumstances for removal, the parents' efforts to reunify with the child, and other related conditions when determining whether to allow the child to reunite with their biological family or be placed in an alternative permanency placement.

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill:

According to the author, "parents in immigration detainment are frequently unable to access services and meet requirements set out by dependency courts to regain custody of their children. Many have lost custody of their children, their parental rights terminated, and their children given up for adoption—not because they were incompetent parents but simply because of their immigration status. It is unacceptable for families to be separated in this way."

Senate Bill 1064 is a comprehensive attempt to eliminate family reunification barriers in the child welfare system for parents who have been detained or deported by providing the courts and social workers the tools necessary to determine what is in the best interest of the child."

Child Welfare System

The purpose of California's Child Welfare System (CWS) is to provide for the protection and the health and safety of children. Within this purpose, the desired outcome is to reunite children with

their biological parents, when appropriate, to help preserve and strengthen families. However, if reunification with the biological family is not appropriate, children are placed in the best environment possible, whether that is with a relative, guardianship or adoption.

In the case of children who are at risk of abuse, neglect or abandonment, county juvenile courts hold legal jurisdiction and children are served by the CWS through the appointment of a social worker. Through this system, there are multiple stages where the custody of the child or their placement are evaluated, reviewed and determined by the judicial system, in consultation with the child's social worker to help provide the best possible services to the child.

At the time a child is identified as needing child welfare services and is in the temporary custody of a social worker, the social worker is required to identify whether there is a relative or guardian to whom a child may be released, unless the social worker believes that the child would be at risk of abuse, neglect or abandonment if placed with that relative or guardian. (Welfare and Institutions Code Sections 306 and 309)

The Welfare and Institutions Code also lays out the conditions under which a court may deem a child a dependent or ward of the court, including when the parent has been incarcerated or institutionalized and is unable to arrange for care for the child, such as placement with a known relative. If the child is deemed a dependent or ward of the court, the court will maintain the child in their home, remove the child from the home but with the goal of reunifying them with their family, or identify another form of permanent placement. Unless the child is not able to be placed with the parent, the court is required to give preference to a relative of the child in order to preserve the child's association with his or her family. Associated with the placement, the assigned social worker shall develop a case plan for the child, which outlines the placement for the child, sets forth services necessary for the child, and outlines the provision of reunification services, if necessary and appropriate.

Reunification Services

When children are removed from the home, but the court determines, in consultation with a child's social worker, that the child would ultimately benefit from being returned to the family, the court may order reunification services for the parents. Reunification services are generally developed on a case-by-case basis to accommodate and respond to the needs of the child and the parents to better facilitate the child's reunification with his or her parent(s).

Reunifications services can include family therapy, parenting classes, drug and alcohol abuse treatment, respite care, parent support groups, home visiting programs, and other coordinated and tailored services necessary to assist the child and the family with reunification. Under current law, for children under the age of three, reunification services are offered for six months and 12 months for children over the age of three.

Shattered Families

In November, 2011 the Applied Research Center (ARC) released a report titled "Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System." According to the ARC, this report is the first of its kind in the nation to assess and detail the number of children and the circumstances under which they are placed in the child welfare system due to their parent(s) being detained or deported by federal immigration authorities.

Through this report, the ARC "conservatively estimates that there are at least 5,100 children currently living in foster care whose parents have been either detained or deported." Based upon extensive surveys of child welfare case workers and juvenile dependency attorneys, most of these children are United States citizens. It also states further that if this trend continues, "in the next five years, at least 15,000 more children will face these threats to reunification with their detained and deported mothers and fathers."

According to a report by the Public Policy Institute of California, over half of the children who enter foster care for the first time are reunified with their birth parents. However, the author states that:

...given the nature of the immigration system, this outcome is less likely for immigrant families. Many counties, such as Los Angeles and Fresno, have policies in place that make family reunification or relative placement feasible for these families, including alternative ways of identifying relatives for background checks and partnerships with foreign consulates.

However, some child welfare departments may lack the tools necessary to keep families united when parents are detained or deported. Systemic policies that specifically address these conditions are necessary to ensure that children are placed in stable environments. Additionally, given California's fiscal woes, promoting relative placement and family reunification for immigrant families has the potential to decrease costs in the child welfare system, as fewer children will be placed into care in the first place and fewer will be kept in foster care unnecessarily.

AB 2070 (Bass), Chapter 482, Statutes of 2008

In 2008 California adopted AB 2070, which provided courts the authority to extend the period of time reunification services may be available to parents whose children are dependents of the court in consideration of barriers faced by parents who are incarcerated, institutionalized, or accessing residential substance abuse treatment services. The intent of this measure was to address the difficult circumstances incarceration presents when a parent is required to meet limited reunification time periods afforded under law. In some cases, parents were having their parental rights terminated due to their incarceration or efforts to seek substance abuse treatment that may not have otherwise jeopardized their fitness as parents.

This measure seeks to add the detention or deportation of parents as another allowable reason the court can take into consideration when determining whether to extend the reunification time period. According to the author, "even though a parent accused of a non-serious crime would normally be released and able to follow through with the family reunification process, non-citizen parents are frequently unable to access services and meet requirements set out by dependency courts to regain custody of their children. This is further complicated by a parent's deportation because of the difficulty in making arrangements in the country of origin."

Recognizing the challenges a parent may face when detained or deported, which includes indeterminate periods of detention and uncertainty, providing additional time by which reunification services can be provided could help to avert the child having to be permanently removed from their family unnecessarily.

Maintaining the Family

Historically, it has been the stated policy of California that whenever possible and appropriate a child who is removed from the home, first preference should be given to placing the child with his or her relatives. This has helped to preserve and strengthen the social bedrock of our society, by keeping families together and reducing society's reliance on its social welfare system.

However, according a number of reports conducted on the impact immigration enforcement has on the child welfare system, many child welfare agencies struggle to place children with relatives who are undocumented. Although it is unclear whether this lack of placement is due to bias, the reluctance of undocumented relatives to come forward to care for the child for fear of being detained or deported themselves, or other reasons, placing children with their relatives, regardless of the relative's immigration status is in the best interest of the child, the family and society.

According to the author, "relatives can provide stable and nurturing environments, and can help ease trauma of family separation... The reality is that even if relatives are undocumented, they can provide much stability and, in contrast to foster care, they increase the chances of family reunification because child welfare departments are not required to petition for the termination of parental rights when a child lives with their own family."

Guidance for County Welfare Agencies

This bill also requires DSS to provide guidance to counties, no later than July 1, 2013, to establish MOUs with appropriate foreign consulates for cases in which a parent has been detained or deported by DHS. The MOU must include, among other things, procedures for contacting a foreign consulate at the onset of a child custody case, locating a detained parent, facilitating family reunification once a parent has been deported, aiding the safe transfer of a child to the parent's country of origin, and communicating with relevant departments and services in that country.

According to the author, "consulates can often facilitate communication with a parent's country of origin and their child welfare agency, locate a detained parent, and access documents for children and parents. With consulate involvement at the onset of a case, social workers and the courts will have an important tool at their disposal to expedite family reunification."

It would also require DSS, prior to July 1, 2013, to provide guidelines to counties and municipalities detailing procedures for social workers to assist children in child custody and dependency cases who are eligible for relief available under immigration laws.

According to the author, "frequently, though children may be eligible for this protective status, but social workers are not aware of it, or do not know how to apply or locate the necessary documents. As a result, children age out eligibility and are left with the challenges of being undocumented." Undocumented, dependent children who are unable to be reunified with one or more of the parents because of abuse, neglect or abandonment, are eligible to obtain legal status under a federal immigration law known as Special Juvenile Immigrant Status. Other children may achieve legal status under the Battered Immigrant Women Protection Act of 2000.

SECOND COMMITTEE OF REFERENCE. This bill was previously heard in the Assembly Judiciary Committee on June 19, 2012 and was approved on an 8-0 vote.

REGISTERED SUPPORT / OPPOSITION:Support

All Saints Church Foster Care Project
Alternative Family Services
American Civil Liberties Union of California
American Federation of State, County, and Municipal Employees, AFL-CIO
Applied Research Center
Asian Americans for Civil Rights & Equality
Asian Law Alliance
ASISTA Immigration Assistance
California Catholic Conference, Inc.
California Immigrant Policy Center
California Latinas for Reproductive Justice
California Partnership
California Partnership to end Domestic Violence (the Partnership)
California Rural Legal Assistance Foundation
California United for a Responsible Budget
California Youth Connection
Center for Community Alternatives
Central American Resource Center (CARECEN)
Children's Defense Fund-California (CDF-CA)
Children's Law Center of California
Clergy and Laity United for Economic Justice, Los Angeles
Coalition for Humane Immigrant Rights of Los Angeles
Coalition to Abolish Slavery and Trafficking (CAST)
Congregation of the Sisters of the Holy Cross
First Focus Campaign for Children
Franciscan Action Network
Guam Communications Network (GCN)
Iglesia de la Comunidad, Presbyterian Church USA
Immigrant Legal Resource Center
Immigration Task Force of the United Methodist Church
Immigration Legal Resource Center
Justice Now
Latino Policy Coalition
Legal Services for Children
Legal Services for Prisoners with Children
Los Angeles Dependency Lawyers, Inc.
Lutheran Office of Public Policy California
Mexican American Legal Defense and Education Fund
MomsRising.org
Mujeres Unidas y Activas
National Association of Social Workers
Public Counsel
Restoration Project, Tucson
Safe Passages

Santa Clara County Board of Supervisors
Services, Immigrant Rights & Education Network
Street Level Health Project
The Young Center for Immigrant Children's Rights
Tongan Community Service Center
Tucson Samaritans
9to5 National Association of Working Women
8 individuals

Opposition

None on file

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