

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

AB 2665 (Carrillo)
Version: June 20, 2022
Hearing Date: June 28, 2022
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Child welfare system: racial disparities

DIGEST

This bill requires the California Department of Social Services (CDSS) to establish a three-year pilot program, comprised of up to five counties participating on an opt-in basis, for the utilization of a blind removal strategy for the decision of whether the child should be removed from the physical custody of their parent or guardian; the bill requires CDSS to submit an evaluation to the Legislature of the pilot program and its impact, as specified.

EXECUTIVE SUMMARY

The child welfare system is intended to achieve a delicate balance of values, including “protecting children from harm, preserving family ties, and avoiding unnecessary intrusion into family life.” (*In re R.T.* (2017) 3 Cal.5th 622, 638.) Unfortunately, and devastatingly, the implementation of the child welfare system is tainted by racial bias. Data show that Black and Native American children are overrepresented in the foster care system, which is correlated with numerous negative outcomes for children and adults who have transitioned out of foster care.

This bill would test a method to reduce the racial bias – conscious or unconscious – in the decisionmaking process for removing children from their homes and placing them into foster care. Under this bill, CDSS would create a voluntary pilot program for up to five counties who are willing to implement blind removal practices. Specifically, counties would be required to redact the parents’ and child’s racial, ethnic, and address information, as well as information about the parents’ gender, sexual orientation, and income. The pilot project would run for three years, with CDSS providing the Legislature with at least two status reports on the program’s effectiveness.

This bill is sponsored by Parenting for Liberation and supported by a number of organizations dedicated to children's and family rights. This bill passed out of the Senate Human Services Committee with a 5-0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the juvenile court, which is intended to provide for the protection and safety of the public and minors falling under its jurisdiction. (Welf. & Inst. Code, §§ 202, 245.)
- 2) Provides that a child may become a dependent of the juvenile court and be removed from their parent or guardian¹ on the basis of enumerated forms of abuse or neglect. (Welf. & Inst. Code, § 300(a)-(j).)
- 3) States that it is the intent of the Legislature that provisions for juvenile court jurisdiction not disrupt the family unnecessarily, intrude inappropriately into family life, or prescribe a particular method of parenting, and for the child welfare system to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, neglected, or exploited, and to ensure the safety, protection, and physical and emotional well-being of the children who are at risk of harm. (Welf. & Inst. Code, §§ 300, 300.2.)
- 4) Requires a social worker, whenever the social worker has cause to believe that there was or is within the county a child who falls within the jurisdiction of the juvenile court under 2), to immediately make any investigation they deem necessary to determine whether child welfare services should be offered to the family and whether proceedings in the juvenile court should be commenced; and, if the social worker determines that it is appropriate to offer child welfare services to the family, the social worker must make a referral to those services, as specified. (Welf. & Inst. Code, § 328.)
- 5) Provides that, when any person applies to a social worker to commence proceedings in the juvenile court pursuant to 2), the social worker must immediately investigate as they deem necessary to determine whether those proceedings must be commenced. If the social worker does not file a petition in the juvenile court within three weeks after the application, the social worker must endorse their decision not to proceed further, including any recommendation made to the applicant, if one is made, to consider commencing a probate guardianship for the child, and their

¹ Going forward, this analysis uses "parent" to refer to a parent or guardian.

reason therefor and to immediately notify the applicant of the action taken or the decision rendered. (Welf. & Inst. Code, § 329.)

- 6) Requires a social worker, upon delivery of a child who has been taken into temporary custody, to immediately investigate the circumstances of the child and the facts surrounding the child's being taken into custody and attempt to maintain the child with the child's family through the provision of services. (Welf. & Inst. Code, § 309(a).)

This bill:

- 1) Makes legislative findings and declarations, including that it is the intent of the Legislature to promote racial equity and advance practices of equity and inclusion in the child welfare system; and that it is the intent of the Legislature to address the racial disparities in the child welfare system by eliminating bias in the decisionmaking process determining whether children are removed from the physical custody of their parent by utilizing a blind removal strategy.
- 2) Defines "blind removal strategy" as redacting the demographic information described in 8) from the investigative report in order to eliminate implicit bias in the decisionmaking process of determining whether a child should be removed from the physical custody of their parent.
- 3) Requires CDSS, on or before July 1, 2023, to establish a three-year pilot program for participating counties for the purpose of addressing racial disparities in the child welfare system. Requirements for participating counties are as follows:
 - a) The pilot program may accept up to five counties.
 - b) The counties must opt to participate on a voluntary basis.
 - c) CDSS shall select counties according to criteria developed on consultation with the County Welfare Directors Association of California, federally recognized tribes located in California, and CDSS's Tribal Advisory Committee.
 - d) In selecting the counties, CDSS shall promote diversity among participating counties in terms of size and geographic location.
 - e) CDSS must select, at a minimum, one county in southern California, one county in northern California, and one county in a rural area of the state.
- 4) Permits CDSS to move forward with the pilot program if it receives fewer than five volunteer counties or does not receive volunteer counties that satisfy the geographic diversity requirements of 3)(e) if CDSS determines that there is adequate participation in the pilot program from the volunteering county or counties to provide useful data and results.

- 5) Provides that if a county begins the pilot program and drops out before the pilot program is complete, CDSS may continue the program in the remaining counties.
- 6) Requires CDSS, in consultation with child welfare agencies and other stakeholders, including the County Welfare Directors Association of California and federally recognized tribes located in California, to establish a working group to develop recommendations to CDSS regarding the development of procedures necessary to implement and evaluate the pilot programs for each county.
- 7) Requires a county that receives funding under the pilot program to utilize a blind removal strategy when deciding whether a child should be removed from the physical custody of their parent or guardian.
- 8) Requires a county that receives funding under the pilot program to include a program whereby at any meeting of the county child welfare agency during which the removal of a child from the child's home is discussed, all of the following information shall be redacted from the case file in preparation for the removal decision and may not be referenced:
 - a) The name of the child and the child's parents.
 - b) The gender of the child's parents.
 - c) The race or ethnicity of the child's parents.
 - d) The sexual orientation of the child's parents.
 - e) The address of the child and the child's parents.
 - f) The income of the child's parents.
- 9) Provides that all redacted identifying information under 8) shall be available for all other purposes throughout the local child welfare agency's involvement with the child, including, but not limited to, evaluations, provisions of services, compliance with the federal Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. §§ 1901 et seq.), and court proceedings.
- 10) Prohibits the blind removal strategy in 6) from being used in any case involving the emergency removal of a child from the custody of their parent.
- 11) Provides the following with respect to participating counties:
 - a) A participating county may implement the pilot for all or a portion of its emergency response program.
 - b) If the county exits the pilot program early, the county shall not be required to reimburse the state for any expenses incurred as a result of the early exit.
 - c) CDSS may continue to implement the pilot program if fewer than five counties remain in the program after its commencement.
 - d) Each county is encouraged, but not required, to take actions in addition to those specified in this section that support the goal of promoting racial equity and advancing practices of equity and inclusion in the child welfare system.

- 12) Requires CDSS to conduct evaluations of the pilot program and its impact and effectiveness, at a minimum, 18 months after implementation and 3 years after implementation, and to submit the information from the evaluation in a report to the Legislature within six months after those periods of implementation. The evaluations must include, but not be limited to, monitoring the county's effect on the rate of Black, Native American, and Latinx children who were removed from their parents' homes.
- 13) Provides that nothing in 1)-12) shall exempt any county or private party from complying with the ICWA and state laws implementing the ICWA.

COMMENTS

1. Author's comment

According to the author:

Families of color are disproportionately represented in California's county Child and Family Services systems. AB 2665 would address racial disparities by utilizing a strategy that redacts information from the case summary when removal and alternate placement is being considered. AB 2665 will ensure that families included in the pilot will receive a fair hearing, and not experience the trauma of separation due to bias. This bill will also allow us to collect useful data on the impact of bias in the decision-making process. Family separation has devastating effects on those who are impacted – short and long term adverse psychological, emotional, educational, and developmental outcomes follow the separation of a child from their family or guardian. This bill will ensure that those making these decisions -- that will change the course of a child's life -- are not influenced by factors that should not be taken into consideration.

2. This bill requires CDSS to establish a pilot program to test a blind removal strategy as a method for eliminating bias in the decision of whether to remove a child from their family

As reported by California's Task Force to Study and Develop Reparation Proposals for African Americans:

Scholars have found that racial discrimination exists at every stage of the child welfare process. State agencies are more likely to be involved with Black families than with white families. Black parents are more likely to be investigated than other families, because neighbors, teachers, and

bystanders are more likely to report Black families than white families, likely due to their own racial biases.²

Studies have shown these disparities cannot be chalked up to differences in the compositions of the families themselves; one study found that, when equally poor Black and white families were equally at risk for future abuse, Black children were 77 percent more likely than the similarly situated white children to be removed from their homes instead of receiving in-home services.³ Another study found that approximately one half of Black and Native American children born in 1999 were investigated by child welfare services before they turned 18 years of age, and were three times as likely as white children to be placed in foster care.⁴ Many of the bill's supporters note that Latinx children are disproportionately represented in foster care in several of California's counties.

In the 2010s, Nassau County, New York attempted to address racial bias in its child welfare system, specifically in meetings to remove a child from their home, by requiring a blind removal strategy.⁵ Under the blind removal strategy, child welfare staff de-identified the case file and presented details relating to a child's demographic information such as names, races, ethnicities, and addresses to prevent the introduction of implicit bias in the removal decision.⁶ Five years after the introduction of the blind removal strategy, racial disparities in child removals had decreased significantly.⁷ In 2020, New York's governor issued an administrative directive requiring all counties to adopt a blind removal process.⁸

This bill requires CDSS to implement a blind removal pilot project in California. The pilot will be comprised of five counties that volunteer to participate and satisfy certain criteria to ensure that the state's geographic and demographic diversity is taken into account. If, however, CDSS does not receive volunteer counties of sufficient number or geographic diversity, CDSS can proceed with this important work if it determines that conducting the pilot program with the volunteering counties will provide useful data and results. To ensure compliance with the ICWA's requirements relating to the placement of Indian children in homes which reflect the unique values of Indian

² California Task Force to Study and Develop Reparation Proposals for African Americans, Interim Report (June 1, 2022), available at <https://oag.ca.gov/ab3121/reports> (last visited June 2, 2022) at p. 282.

³ *Ibid.*

⁴ Putnam-Hornstein, et al., *Cumulative Rates of Child Protection Involvement and Terminations of Parental Rights in California Birth Cohort, 199-2017*, *American Journal of Public Health* (June 2021), Vol. 111, No. 6, at p. 1160.

⁵ Casey Family Program, *How did the blind removal process in Nassau County, N.Y., address disparity among children entering care?* (Apr. 8, 2021), <https://www.casey.org/blind-removals-nassau/> (last visited Jun. 9, 2022).

⁶ *Ibid.*

⁷ *Ibid.*

⁸ N.Y. Administrative Directive 20-OCDF-ADM-19 (Oct. 14, 2020).

culture,⁹ the bill specifies that the pilot program cannot interfere with implementation of the ICWA or state laws implementing the ICWA.

Counties that participate in the pilot project will be required to conduct meetings to determine whether to remove a child from their parent's custody using case files where specified demographic information has been redacted:

- The name of the child and the child's parents.
- The gender of the child's parents.
- The race or ethnicity of the child and the child's parents.
- The sexual orientation of the child's parents.
- The address of the child and the child's parents.
- The income of the child's parents.

A participating county will not be required to redact the demographic information for purposes other than the meeting and or to use the blind removal process for emergency removals.

The pilot project will last for three years, during which CDSS must submit two reports to the Legislature reporting on the project's effectiveness. These reports should provide the Legislature with sufficient information to determine whether the blind removal process should be implemented on a broader basis.

3. Arguments in support

According to Parenting for Liberation, the sponsor of the bill:

Family separation has devastating effects on those who are impacted – short and long term adverse psychological, emotional, and socioeconomic effects follow the separation of a child from their family or guardian. The decision to remove a child from their family, and everything that is familiar, should only take place with the highest level of scrutiny – and yet there is a growing body of research pointing to the presence of implicit racial bias in the process of investigating child abuse or neglect, substantiating abuse or neglect, and recommending the separation of children from their families...

The disparate representation of Black, Native American, and Latinx families in California's child welfare system represents a history, and current reality, of the increased surveillance and criminalization that faces communities of color. The California Department of Social Services and individual counties throughout California have sought to solve the problem at different times through the use of cultural competency and implicit bias training, increased funding for case management, and review of individual counties' decision-making and removal

⁹ See 25 U.S.C. § 1902.

systems; and yet the issue of overrepresentation for families of color remains. Establishing a blind removal pilot is an important first step in restoring equity in the process of family intervention in California.

AB 2665 will ensure that families in the piloted counties will not experience the trauma of separation due to bias, while simultaneously collecting useful data on the impact of bias in the child welfare system.

According to the Juvenile Court Judges of California, a section of the California Judges Association, writing in support:

For decades the judiciary has been concerned about the disproportionate number of Black, Latinx, and Native American children in the child welfare system, in out-of-home care, and consigned to long-term placement. We are excited about AB 2665 in that it sets forth a groundbreaking approach to address such overrepresentation. It has the potential of being the first child welfare reform to bring about major systemic change in the area of disproportionality. We encourage support for promising initiatives to reduce and prevent these disparities...

Establishing a blind removal strategy pilot is an important next step in our movement toward establishing equity in the process of family intervention in California. AB 2665 will ensure families in the piloted counties will not experience the trauma of removal due specifically to bias, while simultaneously collecting useful data on the impact of such bias in the system, along with benchmarks to determine the effectiveness of this approach. AB 2665 includes provisions to ensure that a blind removal strategy does not jeopardize a child's safety. The blind removal strategy does not apply to emergency removals, redacted information may be used to provision of services and in court proceedings, and a decision to leave a child in a home does not preclude the child welfare agency and the court from supervising the family when such supervision is warranted.

SUPPORT

Parenting for Liberation (sponsor)
Alliance for Children's Rights
California Health+ Advocates
California Judges Association, Juvenile Court Judges of California
California Latinas for Reproductive Justice
California Youth Connection
Children's Advocacy Institute - San Diego School of Law
Children's Law Center of California
Dependency Legal Services
Foster Care Counts

Future Is Now Schools
John Burton Advocates for Youth
Los Angeles Dependency Lawyers, Inc.
National Association of Social Workers – California Chapter
National Center for Youth Law
Parent Voices California
Parent Voices Oakland
Women’s Foundation of California
Public Counsel

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 1085 (Kamlager, 2022) prohibits a child from being found to be within the jurisdiction of the juvenile court solely on the basis of the parent’s indigence or other conditions of financial difficult. SB 1085 is pending before the Assembly Human Services Committee.

AB 2595 (Jones-Sawyer, 2022) requires the CDSS to update administrative requirements and guidance to ensure that child welfare investigations treat a parent or guardian’s possession or use of cannabis in the same manner as use or possession of alcohol or legally prescribed medication. AB 2595 is pending before the Senate Appropriations Committee.

Prior Legislation:

AB 656 (Carrillo, 2021) established a blind removal pilot project similar to this bill but with a far broader range of information to be redacted, including the number of children of the parents and any prior investigations of the child’s parents for abuse or neglect that resulted in an unsubstantiated finding. AB 656 died in the Assembly Human Services Committee.

PRIOR VOTES:

Senate Human Services Committee (Ayes 5, Noes 0)
Assembly Floor (Ayes 76, Noes 0)
Assembly Appropriations Committee (Ayes 12, Noes 0)
Assembly Judiciary Committee (Ayes 9, Noes 0)
Assembly Human Services Committee (Ayes 8, Noes 0)
