

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

AB 2711 (Calderon)  
Version: March 30, 2022  
Hearing Date: June 8, 2022  
Fiscal: Yes  
Urgency: No  
AWM

**SUBJECT**

Juvenile records access

**DIGEST**

This bill clarifies that the California Department of Social Services (CDSS) can view a juvenile court record without a court order when representing a child in an action to vacate an order of adoption.

**EXECUTIVE SUMMARY**

As a general rule, juvenile case files are confidential and may be accessed only by specified classes of persons and entities unless a juvenile court finds good cause to release the files. (Welf. & Inst. Code, § 827 (section 827).) Traditionally, the only class of people entitled to access juvenile case files without a court order was parties to a juvenile dependency hearing, including the attorneys and parents or guardians. Over the years, the Legislature has expanded the list of automatically approved classes in section 827 to include: court personnel; prosecutors and various other attorneys; judges, referees, and other hearing officers; mediators; probation officers; law enforcement officers; investigators; the superintendent of the minor's school district; agencies that provide services to the minor or the minor's family; and certain parties/real parties in interest to an appeal or writ petition relating to a juvenile court order. All other parties wishing to view the records must petition the court for access, and the court must give the affected parties (including the juvenile) notice and the opportunity to be heard. In certain cases, disseminating juvenile case files without authorization is a misdemeanor.

This straightforward bill clarifies existing law to ensure that CDSS has timely access to an adopted minor's case files in the very rare circumstance where a party to an adoption has petitioned the court to reverse the adoption. In such cases, CDSS is appointed to represent the adopted minor and is tasked with drafting a report to the court that, among other things, requires CDSS to review the juvenile case file. According to the author, CDSS has reported there have been instances in some counties

that did not allow CDSS to inspect or make copies of these case files due to uncertainty about whether existing law allowed CDSS to inspect and copy them. This bill simply clarifies that CDSS may view a juvenile case file in these adoption-reversal cases without a court order. The author has agreed to amend the bill to additionally clarify that CDSS may view a juvenile case file when it represents a child in a proceeding to reverse a finalized tribal customary adoption.

This bill is sponsored by the author. There is no known opposition. If this bill is passed by this Committee, it will then be heard by the Senate Human Services Committee.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Authorizes an unmarried minor to be adopted by an adult as provided. (Fam. Code, div. 13, pt. 2, §§ 8600 et seq.)
- 2) Authorizes an adoptive parent, within five years of the entry of an order of adoption entered pursuant to the laws of this state, to file a petition to vacate the order of adoption if the child shows evidence of a developmental disability or mental illness as a result of conditions existing before the adoption but of which the adoptive parent had no knowledge or notice before the entry of the order of adoption, and if the extent of the disability or mental illness is severe enough that the child cannot be relinquished to an adoption agency on the grounds that the child is considered unadoptable. (Fam. Code, § 9100(a), (b).)
- 3) Requires the clerk of the court in which a petition in 2) was filed to immediately notify CDSS upon the filing the petition, and requires CDSS, within 60 days of receiving the notice, to file a full report with the court and appear before the court for the purpose of representing the adopted child. The court's ruling must take into consideration the best interests of the child. (Fam. Code, §§ 9100(c), 9102.)
- 4) Provides that the court may make an order setting aside the order of adoption pursuant to 2) if the facts set forth in the petition are proved to the satisfaction of the court. (Fam. Code, § 9100(a).)
- 5) Requires, where an order of adoption is set aside, the court making the order to direct the district attorney, county counsel, and county welfare department to take appropriate action, and authorizes the court to make any order relative to the care, custody, or confinement of the child pending the proceeding as the court sees fit. (Fam. Code, § 9101.)
- 6) Authorizes a tribal customary adoptive parent, within five years of the issuance of a tribal customary adoption order, to file a petition to vacate the order of adoption if

the child shows evidence of a developmental disability or mental illness as a result of conditions existing before the adoption but of which the tribal customary adoptive parent had no knowledge or notice before the entry of the order of adoption, and if the extent of the disability or mental illness is severe enough that the child cannot be relinquished to an adoption agency on the grounds that the child is considered unadoptable. (Welf. & Inst. Code, § 366.26(e)(3).)

- 7) Requires the clerk to immediately notify CDSS upon the filing of a petition in 6), and requires CDSS, within 60 days of receiving the notice, to file a full report with the court and appear before the court for the purpose of representing the adopted child. The court's ruling must take into consideration the best interests of the child. (Welf. & Inst. Code, § 366.26(e)(3).)
- 8) Provides that the court may make an order setting aside the tribal customary adoption order pursuant to 6) if the facts set forth in the petition are proved to the satisfaction of the court. (Welf. & Inst. Code, § 366.26(e)(3).)
- 9) Requires, where a final decree of tribal customary adoption has been set aside or vacated, the child to be returned to the custody of the county in which the proceeding for tribal customary adoption was finalized and for the final disposition of the child to be determined in consultation with the child's tribe. (Welf. & Inst. Code, § 366.26(e)(3).)
- 10) Establishes the juvenile court, which, among other things, has jurisdiction over minors who have been removed from their parents' care and is tasked with securing for such minors custody and care. (Welf. & Inst. Code, § 202.)
- 11) Requires that the juvenile court's findings in a juvenile case be entered in the form of a written record known as the "juvenile court record." (Welf. & Inst. Code, § 825.)
- 12) Defines the "juvenile case file" as a petition filed in a juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer, judge, referee, or other hearing officer and thereafter retained. (Welf. & Inst. Code, § 827(e).)
- 13) Provides that, unless a person is authorized to inspect a juvenile case file without a court order, the person seeking access to a juvenile case file must petition the juvenile court for the information. The court must afford due process to all interested parties before releasing a juvenile case file, including notice and an opportunity to file an objection. (Welf. & Inst. Code, § 827(a)(3).)
- 14) Provides that the following persons and agencies are authorized to inspect a juvenile case file without a court order:
  - a) Court personnel.

- b) The district attorney, city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases.
- c) The minor who is the subject of the proceeding.
- d) The minor's parent or guardian.
- e) The attorneys for the parties, judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in juvenile proceedings involving the minor.
- f) The county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action.
- g) The superintendent or designee of the school district where the minor is enrolled or attending school.
- h) Members of specified child protective agencies.
- i) CDSS, to carry out its duties relating to specified CDSS-administered programs, overseeing and monitoring county child welfare agencies, foster children, and out-of-state placements.
- j) Authorized CDSS staff and staff of other entities licensed by CDSS as necessary to perform their duties related to resource family approval, or as necessary to inspect, approve, license, or monitor and investigate community care facilities or resource families.
- k) Members of children's multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor.
- l) Specified persons actively involved in a family law case concerning custody and/or visitation of the minor, including the judge, commissioner, or hearing officer; a family court mediator; a court-appointed evaluator or other person conducting a court-appointed custody evaluation or investigation; and counsel appointed for the minor in the case.
- m) A statutorily authorized or court-appointed investigator conducting an investigation relating to, or participating in, a guardianship case involving a minor, while acting in the scope of the investigator's duties in the case.
- n) A local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders.
- o) Juvenile justice commissions and their members.
- p) The Department of Justice, to carry out its duties relating to the repository for sex offender registration and notification.
- q) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.
- r) A probation officer who is preparing a report relating to a hearing for an honorable discharge before the Board of Juvenile Hearings.
- s) A person who was permitted by the superior court to view juvenile case records, when the person is a party or real party in interest to an appeal or writ petition relating to an order of the court. Such a person may view the same juvenile case records that they viewed in the superior court proceedings. (Welf. & Inst. Code, § 827(a)(1)(A)-(R) & (a)(6).)

- 15) Prohibits an agency or a person authorized to receive a juvenile case file from disseminating the file or information relating to its content to persons not authorized to receive the information without prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court. (Welf. & Inst. Code, § 827(a)(4).)

This bill:

- 1) Specifies that, when a court clerk notifies CDSS that a petition to vacate an adoption has been filed, CDSS may inspect and copy an adoption case file, including a juvenile case file, for the purpose of completing its duties of filing a report with the court and representing the adopted child.
- 2) Adds, to the list of entities and individuals authorized to view a juvenile case file, CDSS personnel, for the purpose of carrying out the department's duties under 1).
- 3) Provides that CDSS personnel may also make copies of a juvenile case file to carry out the department's duties under 1).

### COMMENTS

#### 1. Author's statement

According to the author:

AB 2711 clarifies existing law to ensure that the California Department of Social Services is able to carry out their statutorily required duties related to adoption set asides. Even though the Department must participate in the adoption set aside process, they are not explicitly allowed to inspect or copy case files that are needed to fulfill their tasks, which has resulted in some instances of case files not being provided to the Department. This bill removes any ambiguity related to this issue.

#### 2. This bill clarifies that CDSS personnel may view a juvenile case file without a court order to fulfill its duties in a proceeding to vacate an order of adoption

Adoption is a legal process to give permanent parental rights to adoptive parents who elect to take a child into their home as a permanent family member. According to Adopt US Kids, about 5,500 children are adopted each year in California, and about 2,000

children in California need an adoptive family.<sup>1</sup> State law imposes separate considerations and requirements for tribal customary adoptions accomplished by and through the tribal custom, traditions, or law of the child's American Indian tribe.<sup>2</sup>

Under very limited and specific circumstances, an adoption or a tribal customary adoption can be terminated by a party to the adoption by petitioning the court to vacate or set aside the adoption order. Relevant to this bill is the procedure for terminating an adoption or tribal customary adoption when the child shows evidence of a developmental disability or mental illness as a result of conditions that existed before the adoption and which the adoptive parent(s) had no knowledge of the disability or illness prior to the adoption.<sup>3</sup> A petition to set aside the adoption under these circumstances must be filed within five years after the entry of the order of adoption.<sup>4</sup> Within 60 days of notice of the petition, CDSS must file a full report with the court and appear before the court for the purpose of representing the adopted child.<sup>5</sup>

In considering a petition to reverse an adoption, the court will consider the welfare and best interests of the adoptee and whether the adoption relationship was made under duress or fraud. CDSS cannot adequately represent the interest of the adopted minor without being able to access the minor's case files, including the adoption file and the minor's juvenile court file. According to the author, however, some counties are unwilling to provide CDSS with the juvenile case file because section 827 does not explicitly authorize CDSS personnel to view or copy a juvenile case file in this circumstance.

In order to ensure that CDSS can do its important job of representing an adopted child in a proceeding to vacate an adoption, this bill adds express provisions authorizing CDSS to view and copy a juvenile case file in connection with such a proceeding. As discussed below, the author has agreed to amend the bill to extend the express authorization to proceedings to vacate customary tribal adoptions.

### 3. Amendments

As noted above, it appears that the author inadvertently failed to extend CDSS's authority to view a juvenile case file in cases where a customary tribal adoptive parent has petitioned to vacate or set aside a customary tribal adoption.<sup>6</sup> This procedure is

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<sup>1</sup> See AdoptUSKids, California foster care and adoption guidelines, <https://www.adoptuskids.org/adoption-and-foster-care/how-to-adopt-and-foster/state-information/california> (last visited May 26, 2022).

<sup>2</sup> See Welf. & Inst. Code, § 366.24; see also Fam. Code, § 8600.5 (exempting tribal customary adoptions from general unmarried minor adoption statutes).

<sup>3</sup> See Fam. Code, §§ 9100-9102; Welf. & Inst. Code, § 366.26(e)(3).

<sup>4</sup> Fam. Code, § 9100(b); Welf. & Inst. Code, § 366.26(e)(3).

<sup>5</sup> Fam. Code, § 9100(c); Welf. & Inst. Code, § 366.26(e)(3).

<sup>6</sup> See Welf. & Inst. Code, § 366.26(e)(3).

virtually identical to the procedure for vacating non-customary tribal adoptions addressed under the Family Code and imposes the same obligation on CDSS to file a report on and represent the child in the action. CDSS thus has the same interest in viewing a juvenile case file in an action to vacate a customary tribal adoption as it does in an action to vacate a non-customary tribal adoption. In order to ensure that CDSS has access to juvenile case files equally across these case types, the author has agreed to clarify that CDSS can view a juvenile case file in customary tribal adoption vacation proceedings without a court order. The amendments are set forth below, subject to any technical and nonsubstantive changes Legislative Counsel may make.

#### Amendment 1

After Welfare and Institutions Code section 366.26(e)(3), insert "(A)"

#### Amendment 2

After the end of the current Welfare and Institutions Code section 366.26(e)(3), insert:

"(B) Notwithstanding any other law, an adoption case file, including a juvenile case file, as defined in subdivision (e) of Section 827, may be inspected and copied by the department for the purpose of completing the duties pursuant to this paragraph."

#### Amendment 3

On page 5, in line 18, strike out "Code." and insert "Code or paragraph (3) of subdivision (e) of Section 366.26."

#### SUPPORT

None known

#### OPPOSITION

None known

#### RELATED LEGISLATION

Pending Legislation: SB 1071 (Umberg, 2022) authorizes the attorneys in an administrative appeal pertaining to a foster child or caregiver's receipt of certain state-administered public assistance programs to access the portions of the confidential juvenile case file that the agency relied on in reaching the appealed decision, without needing a court order to do so. SB 1071 is pending before the Assembly Human Services Committee.

Prior Legislation:

AB 2659 (Cooley, 2018) would have authorized an individual seeking access to juvenile case files in child dependency proceedings to petition the criminal court for the release of information to a criminal prosecutor or defense attorney of record if the court determined that the file contained information that is material to a current criminal prosecution, as specified. AB 2659 died in the Assembly Appropriations Committee.

AB 1617 (Bloom, Ch. 992, Stats. 2018) authorized parties who were permitted to view juvenile case files in the juvenile court, and who are parties or real parties in interest to an appeal or writ proceeding to an order of that juvenile court, to view the same juvenile case files for purposes of the appeal or writ proceeding, subject to the existing limitations on dissemination of records.

SB 312 (Skinner, Ch. 679, Stats. 2017) authorized the court to order the sealing of records for certain serious or violent offenses committed when a juvenile was 14 years of age or older, as specified.

AB 1945 (Stone, Ch. 858, Stats. 2016) authorized a child welfare agency to access sealed juvenile records for limited purposes.

**PRIOR VOTES:**

Assembly Floor (Ayes 65, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Judiciary Committee (Ayes 9, Noes 0)

Assembly Human Services Committee (Ayes 8, Noes 0)

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