

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

AB 2845 (Patterson)
Version: March 29, 2022
Hearing Date: June 21, 2022
Fiscal: Yes
Urgency: No
ME

SUBJECT

Parent and child relationship

DIGEST

This bill expands the use of post adoption contact agreements to maintain ties between an adopted child and their birth family and specifies what a court must consider before ruling on a petition to terminate parental rights.

EXECUTIVE SUMMARY

This bill is one of the Academy of California Adoption Lawyers' annual adoption bills, which makes changes to adoption and family law in California, including:

- requiring the court to consider the criminal and Child Protective Services history of all parties, as well as the child's living circumstances, before ruling on a petition to terminate parental rights;
- allowing the court to consider additional facts in connection with the child's past and current living circumstances among other factors, and requiring cooperation from all parties with the investigation process; and
- specifying responsibility for the filing of any post-adoption contact agreement, and to provide remedies in the event a post-adoption contact agreement is not filed with the court or the court does not approve the agreement.

The author writes that this bill "seeks to correct legal uncertainties, inequities, and gaps in the Family Code related to adoption proceedings, including termination of parental rights." There is no known opposition. The bill passed out of the Assembly with no "no" votes.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the California Uniform Parentage Act and defines a parent and child relationship as the legal relationship existing between a child and the child's natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. (Fam. Code § 7600 *et seq.*)
- 2) Allows a proceeding to be brought to terminate parental rights and declare a child free from the custody and control of a parent if the parent is convicted of a felony and the facts of the crime are of such a nature as to prove the unfitness of the parent to have future custody and control of the child. In making that determination, allows the court to consider the parent's criminal record prior to the felony conviction to the extent that the criminal record demonstrates a pattern of behavior substantially related to the welfare of the child or the parent's ability to exercise custody and control of the child. (Fam. Code § 7825.)
- 3) Allows a petition to be filed to declare a child free from the custody and control of a parent by DSS, a county welfare department, a licensed private or public adoption agency, a county adoption department, or a county probation department which is planning adoption placement for the child. (Fam. Code § 7840.)
- 4) Upon filing of a petition in 3), requires the juvenile probation officer, qualified court investigator, licensed clinical social worker, licensed marriage and family therapist, licensed professional clinical counselor, or the county department designated by the board of supervisors to administer the public social services program to immediately investigate the circumstances of the child. Requires the investigator to provide to the court a written report of the investigation with a recommendation of the proper disposition to be made in the proceeding in the best interest of the child and requires the report to include specified information. (Fam. Code § 7850-51.)
- 5) Makes legislative findings and declarations regarding the benefit of continuing contact between some adoptive children and their birth relatives and the importance of post-adoption contact agreements, which can be beneficial to adoptive children under certain circumstances. States that nothing in California adoption laws shall be construed to prevent the 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. Provides ways to seek enforcement of a post-adoption 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 post-adoption contact agreement. (Fam. Code § 8616.5.)

This bill:

- 1) Requires a court, when considering the unfitness of a parent who has been convicted of a crime for purposes of determining whether to terminate parental rights, to consider the parent's criminal record to determine whether the criminal record demonstrates a pattern of behavior substantially related to the welfare of the child or the parent's ability to exercise custody and control regarding the child.
- 2) Requires the investigative report, when a petition is filed by the Department of Social Services (DSS), a county welfare department, a licensed private or public adoption agency, a county adoption department, or a county probation department to declare a child free from the custody and control of a parent for purposes of adoption, to include, among other things, a recommendation whether granting or denying the petition will serve the best interest of the child. Allows the court to order further investigation, as it deems appropriate to the case, including, but not limited to, (a) a summary of the child's past and current living circumstances and residence history; (b) interviews with all real parties in interest; and (c) a background summary regarding each nonagency party to the case, including, but not limited to, previous guardianship investigations and any criminal or child welfare agency history. Requires each party to cooperate with the investigation. Provides that a petitioner's failure to cooperate with the investigation may be grounds for the investigator to recommend dismissal of, and for the court to dismiss, the petition.
- 3) Allows post-adoption contact agreements to be extended to a broader definition of birth relatives, nonrelative extended family members, and to non-federally recognized Indian tribes, and allows all parties to have the right to visitation and contact, not just information.
- 4) Requires the court to grant post-adoption contact privileges if a contract is executed, absent a specific finding that the privileges in the agreement are not in the child's best interest. If the court does not grant the privileges, requires the court to schedule a hearing on the agreement and requires petitioners to notice all signatories to the agreement and allows the signatories to attempt to reach an agreement on a new agreement. If no such agreement is reached, allows any person or tribe, whose consent to the adoption is required, to withdraw that consent if it was based on the promise to enter into a post-adoption contact agreement.
- 5) Requires, in every adoption, each petitioner to inform the court in writing whether there is a post-adoption contact agreement, and if entered prior to the adoption, requires that the terms of the agreement be included. Requires the adoption agency, in an agency adoption, to file the information, as provided, and in an independent or step-parent adoption, requires the petitioner to do so.
- 6) If a post-adoption contact agreement is executed, but not filed with the court at the time of the adoption, requires the court, during the child's minority, upon the

request of any signatory to the agreement or by the minor's counsel, to enter the agreement as of the date of the adoption order, unless the court finds by clear and convincing evidence that it is not in the child's best interest to do so, and gives the court discretion to award attorney's fees and damages to any party aggrieved by the failure to file the information as required.

COMMENTS

1. Intention of the bill author and sponsor

The author writes:

AB 2845 seeks to correct legal uncertainties, inequities, and gaps in the Family Code related to adoption proceedings. The purpose of the bill is to remedy all of the problems identified above, by doing the following:

(1) It clarifies and expands what a court must consider when determining whether to terminate parental rights; and

(2) It expands the use of post-adoption contact agreements and resolves serious issues with that process, which under current law is open for mistakes and abuses – creating barriers to healthy, ongoing relationships between children and other relatives or extended family members.

These changes appropriately modernize adoption-related laws to establish more fairness and better reflect current practice and realities.

According to the Academy of California Adoption-ART Lawyers (ACAL), sponsors of this bill:

Part of ACAL's mission is to provide professional, public, and judicial education on adoption, assisted reproduction, guardianship, foster care proceedings, and legislation. We encourage fair and balanced family formation laws and regulations and seek to prevent exploitation of those involved in these matters. AB 2845 will appropriately modernize several adoption and assisted reproduction-related laws to establish more fairness and better reflect current practice and realities.

2. Specifies what a court must consider before ruling on a petition to terminate parental rights

Most terminations of parental rights for unfitness occur in the juvenile court through the dependency system, where all parties can be represented by counsel and where parents can be offered supports and services to maintain the family unit, if possible. Parental rights can also be terminated under the Family Code for multiple reasons, most often for adoption of the child, with no availability of the supports and services provided in the dependency system. There is a specific provision that allows a family

law proceeding to be brought to terminate parental rights if the parent is convicted of a felony and the facts of the crime are of such a nature as to prove the unfitness of the parent to have future custody and control of the child. In making that determination, the court is allowed, though not required, to consider the parent's criminal record prior to the felony conviction to the extent that the criminal record demonstrates a pattern of behavior substantially related to the welfare of the child or the parent's ability to exercise custody and control regarding the child. (Fam. Code § 7825.) The bill would make that consideration mandatory, requiring the court to consider the parent's criminal record to determine whether the criminal record demonstrates a pattern of behavior substantially related to the welfare of the child or the parent's ability to exercise custody and control regarding the child. Thus, the court is required to consider the person's overall record more holistically in the course of making a determination about the present fitness of the parent. (See *In re Terry E.* (1986) 180 Cal.App.3d 932, 950; *In re Michele C.* (1976) 64 Cal.App.3d 818, 822-823.)

In addition, this bill requires that the entity that conducts the investigation to declare a child free from the custody and control of a parent for purposes of adoption – whether DSS, a county welfare department, a licensed private or public adoption agency, a county adoption department, or a county probation department – must now include in their report, among other things, a recommendation of whether granting or denying the petition will serve the best interest of the child. The court is permitted, though not required, to order further investigation as it deems appropriate to the case, including, but not limited to: a summary of the child's past and current living circumstances and residence history; interviews with all real parties of interest; and a background summary regarding each nonagency party to the case, including, but not limited to, previous guardianship investigations and any criminal or child welfare agency history.

The bill also provides that the petitioner's failure to cooperate with the investigation may be grounds for the investigator to recommend dismissal of, and for the court to dismiss, the petition.

3. Expands the use of post adoption contact agreements to maintain ties between an adopted child and their birth family

A post-adoption contact agreement is a voluntary agreement between the birth parents and the adoptive parents explaining the future contact that may occur between birth relatives, including Native American tribes, and the child. Existing legislative intent states that families may benefit from these agreements and that they are intended to “ensure children of an achievable level of continuing contact when contact is beneficial to the children and the agreements are voluntarily executed by birth relatives.” (Family Code § 8616.5 (a).) Existing law provided ways to enforce these agreements, but that may never include setting aside the adoption itself.

This bill expands post-adoption contact agreements. First, it defines birth relatives who may enter post-adoption contact agreements broadly and then expands the scope of

individuals who may enter these agreements to include nonrelative extended family members, defined as adult caregivers who have an established familial relationship with a relative of the child or a familial or mentoring relationship with the child. (Welf. & Inst. Code § 362.7.) This may include relatives of the child, teachers, medical professionals, clergy, neighbors, and family friends. The bill expands the tribes who may have contact with the child to tribes recognized in California under Welfare & Institutions Code Section 306.6.

Second, the bill allows all parties to have the right to visitation and contact with the child, not just information about the child, even if birth relatives have not had a preexisting relationship with the child.

Third, the bill creates a presumption that the post-adoption contact agreement is reasonable by requiring the court to grant the post-adoption contact privileges for an executed agreement, absent a specific finding that the privileges in the agreement are not in the child's best interest. If the court does not grant the privileges, the bill requires the court to schedule a hearing on the agreement.

Finally, to ensure that the court is aware of the agreement, the bill requires, in every adoption, that each petitioner inform the court in writing whether there is a post-adoption contact agreement, and if entered before the adoption, requires that the terms of the agreement be included. If a post-adoption contact agreement is executed, but not filed with the court at the time of the adoption, the bill requires the court, during the child's minority, upon the request of any signatory to the agreement or by the minor's counsel, to enter the agreement as of the date of the adoption order unless the court finds by clear and convincing evidence that it is not in the child's best interest to do so. The bill gives the court discretion to award attorney's fees and damages to any party aggrieved by the failure to file the information as required.

SUPPORT

Academy of California Adoption-ART Lawyers (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 2495 (Patterson, 2022) is the second part of the Academy of California Adoption Lawyers' annual adoption bill. The bill makes multiple changes to adoption and family law in California, including: changing the rules for determining whether an embryo donor is an intended parent; specifying what a court must consider when determining whether to terminate the parental rights of an unfit parent; expanding the use of post-adoption contact agreements; and expanding venue options

for step-parent adoptions and readoptions of children adopted in other countries. The bill is currently pending before this Committee.

Prior Legislation: AB 993 (Patterson, 2021) is the Academy of California Adoption Lawyers' annual adoption bill from 2021 and contains many of the same provisions in this bill, plus some not included here. The bill passed the Senate Judiciary Committee on a unanimous vote but was held in the Senate Committee on Appropriations.

PRIOR VOTES:

Assembly Floor (Ayes 74, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Judiciary Committee (Ayes 9, Noes 0)
