
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1001 **Hearing Date:** June 14, 2016
Author: Maienschein
Version: May 11, 2016
Urgency: No **Fiscal:** Yes
Consultant: AA

Subject: *Child Abuse: Reporting: Foster Family Agencies*

HISTORY

Source: Children's Advocacy Institute at the University of San Diego School of Law

Prior Legislation: None

Support: Board of Behavioral Sciences; California District Attorneys Association;
California Welfare Directors Association of California; Child Abuse Prevention
Center; Crime Victims United of California

Opposition: None known

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to 1) require that if the California Department of Social Services (CDSS), as a condition of licensure, requires the specified officials of a foster family agency to attend an orientation, then that orientation shall include a description of policies, procedures, or practices that violate state's mandated reporter statutes; 2) require CDSS to take reasonable action if a violation is found, as specified; 3) add board members of a public or private organization whose duties require direct contact and supervision of children as mandated child abuse and neglect reporters; 4) add social workers in foster family agencies to the existing county social worker whistleblower program; and 5) require additional legislative reporting, as specified.

Existing law establishes the California Community Care Facilities Act to provide for the licensure and regulation of community care facilities. (Health and Safety Code ("HSC") § 1500, *et seq.*)

Existing law defines a foster family agency to mean any public agency or private organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that level of care. Requires private foster family agencies to be organized and operated on a nonprofit basis. (HSC § 1502 (a)(4))

Existing law permits the California Department of Social Services ("CDSS") to deny an application for, or suspend or revoke, any license, or any special permit, certificate of approval,

or administrator certificate, for the violation of rules or regulations governing Community Care Facilities, as specified. (HSC § 1550)

Existing law permits CDSS to prohibit any person from being a member of the board of directors, an executive director, or an officer of a licensee, who has violated rules or regulations, engaged in conduct that is inimical to health, morals, welfare or safety of the clients or others, been denied an exemption to work in the facility, or other violations. (HSC 1558)

This bill provides that if CDSS, as a condition of licensure, requires the chief executive officer or other authorized member of the board of directors and the administrator of a foster family agency to attend an orientation given by the licensing agency that outlines the applicable rules and regulations for operation of a foster family agency, that orientation shall include, but not be limited to, a description of policies, procedures, or practices that violate the mandated child abuse and neglect reporting laws, as specified (Penal Code § 11166 (i)(1) or (2)).

This bill provides that if CDSS requires, as part of an application for licensure for a foster family agency, a written plan of operation, that plan of operation shall include a written plan establishing policies, procedures, or practices to ensure that the foster family agency does not violate the mandated child abuse and neglect reporting laws, as specified (Penal Code § 11166 (i)(1) or (2)).

This bill defines a foster family agency by cross-reference, as specified.

This bill provides that CDSS “shall take reasonable action, including, but not limited to, prohibiting a person from being a member of the board of directors, an executive director, or an officer of a licensee of a licensed facility or certified family home, or denying an application for, or suspending or revoking, a license, special permit, certificate of approval, or administrator certificate, issued under this chapter, or denying a transfer of a license pursuant to paragraph (2) of subdivision (c) of Section 1524, upon a finding of a violation of subdivision (i) of Section 11166 of the Penal Code, pertaining to mandated child abuse and neglect reporting laws.

Existing law requires mandated reporters to make a report of suspected abuse or neglect to a specified law enforcement agency or county child welfare department, prohibits agencies that are required to receive reports from refusing to accept a report and requires the receiving agency to maintain a record of all reports received. (Penal Code § 11165.9)

Existing law requires that a mandated reporter who in his or her professional capacity knows or reasonably suspects a child has been the victim of child abuse or neglect that the mandated reporter must make an initial report by telephone to the agency immediately or as soon as is practicably possible, and shall prepare and send a written follow-up report within 36 hours of receiving the information about the incident, as specified. (Penal Code § 11166.)

Existing law establishes within the Child Abuse and Neglect Reporting Act, the requirement for 44 specified categories of persons who work with children to report suspected abuse or neglect, as well as other individuals whose professions or volunteer work may include routine interactions with children. (Penal Code § 11165.7)

This bill adds a board member of a public or private organization whose duties require direct contact and supervision of children, and clarifies that this includes a foster family agency.

Existing law provides that failure of a mandated reporter to report an incident of known or reasonably suspected child abuse or neglect is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. (Penal Code 11166 (c))

Existing law specifies that mandated reporting duties are individual, and prohibits any supervisor or administrator from impeding or inhibiting the reporting duties, and provides that no person making a report shall be subject to any sanction for making the report, but permits internal procedures to facilitate reporting and apprise supervisors and administrators of reports to be established. (Penal Code § 11166 (i))

This bill provides that an “internal policy shall not direct an employee to allow his or her supervisor to file or process a mandated report under any circumstances.”

Existing law requires CDSS to establish a process to receive voluntary disclosures from social workers who believe that a policy, procedure, or practice by a county child welfare agency endangers the health or well-being of a child or children, and is contrary to existing statute or to public policy, as specified. Current law further requires a whistleblower report be provided to the Legislature by January 1, 2018 with the number of disclosures received, a summary of issues raised and departmental actions. (Welfare and Institutions Code § 10605.5.)

This bill provides that effective January 1, 2018, all of the duties imposed on CDSS pertaining to the voluntary disclosures described about “shall apply with respect to the receipt of voluntary disclosures from social workers employed at a foster family agency, as defined in Section 1502 of the Health and Safety Code, including, but not limited to, disclosures from social workers who have reasonable cause to believe that a policy, procedure, or practice violates paragraph (1) or (2) of subdivision (i) of Section 11166 of the Penal Code.”

This bill would require that no later than July 1, 2019, CDSS shall report to the Legislature only the following information:

- 1) The total number of relevant disclosures received from social workers employed at foster family agencies, including the month and year the disclosure was received.
- 2) A summary description of both of the following:
 - a) The issues raised in the disclosures received from a social worker.
 - b) The actions taken by the department in response to the disclosures.

This bill would require that no later than July 1, 2019, the department shall post on its Internet Web site the information described above.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Stated Need for This Bill

The author states:

The problem is that FFAs must recruit families to care for foster children. FFAs also depend on county contracts and counties won't like to see if FFAs are recruiting foster parents that commit abuse or neglect. So in order for FFAs to keep their contracts with the counties, supervisors HAVE REFUSED TO PERMIT SOCIAL WORKERS IN THEIR EMPLOY TO FILE MANDATED

REPORTS ON FFA FOSTER PARENTS OR FRUSTRATED SUCH EFFORTS KNOWING THAT THE LIKELIHOOD OF THIS LACK OF REPORTING BECOMING A CRIMINAL MATTER IS EXTREMELY REMOTE. THERE MUST BE AN ADDITIONAL CIVIL REMEDY AND FFAS MUST BE MADE AWARE OF IT.

2. Background

This bill was first heard in the Senate by the Senate Human Services Committee, which passed the bill (5-0) on May 10, 2016. As that Committee's analysis explained, nationally, an estimated 1,520 children died from abuse and neglect in 2013, according to data from the National Child Abuse and Neglect Data System (NCANDS). The US Administration on Children and Families translates this to a rate of 2.04 children per 100,000 children in the general population and an average of four children dying every day from abuse or neglect. NCANDS defines "child fatality" as the death of a child caused by an injury resulting from abuse or neglect or where abuse or neglect was a contributing factor.

In FFY 2013, an estimated 679,000 children were victims of abuse and neglect, or a rate of 9.1 victims per 1,000 children in the population, and or 1,860 victims per day. More than one-quarter of the victims were younger than 3 years and one in five were between 3 and 5 years old. The federal government's has established as its standard that states no more than 0.32 percent of children in foster care should be abused. California met or surpassed that standard in the five years reported, between 2009 and 2013.

California's county-based child welfare system is designed to protect children at risk of child abuse and neglect or exploitation by providing intensive services to families to allow children to remain in their homes, or by arranging temporary or permanent placement of the child in the safest and least restrictive environment possible. It is the legal "parent" for children in the foster care system. Approximately 62,000 children were under the custody of the child welfare system as of October 2015, according to the state's child welfare case management system. About 45,000 children were in out-of-home placements in 2016, according to data released by CDSS with the governor's budget. Of those, approximately 14,000 are placed with Foster Family Agencies.

The state licenses a variety of foster home options for children who are determined to need out-of-home care. A foster family home is typically a private home licensed by a county to provide care. Children with more intensive needs may be instead referred to a foster family agency, which is a licensed, private, nonprofit organization that recruits and trains foster parents. Foster parents in an FFA are certified by the FFA rather than being licensed by the county. FFAs are responsible for providing professional support and case management to the foster parents and children, including regular monitoring and oversight of the FFA's certified families to ensure they are meeting the needs of the children who are placed with them. As of June 2015, there were 242 FFAs statewide with 11,034 FFA-certified homes.