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Health and Safety

A Breath of Fresh Air: Chapter 292 Implements a Smoke-Free Environment in Foster Care

Lindsay Barnes

Code Sections Affected

Health and Safety Code § 1530.7 (new).
AB 352 (Hall); 2013 STAT. Ch. 292.

I. INTRODUCTION

Every year, the State of California places thousands of children into foster care when their health or safety is compromised.¹ As of April 2013, 57,750 children in California live in foster care, with 34,375 in foster care for over one year.² While Child Welfare Services (CWS) intends placement to be temporary, with the goal of returning children to their parents, many children stay in foster care for several years and sometimes throughout their entire childhood.³ When the State of California places a child into foster care, it has a legal duty to protect the child's safety and well-being.⁴ In addition, the state has the legal responsibility to implement regulations and standards for licensure of a foster care facility or organization in order to protect a child's well-being.⁵ California spends close to one billion dollars on services and care for children in foster care every year.⁶ One situation where a foster child's well-being may be seriously compromised is exposure to secondhand smoke.⁷

1. See CHILD & FAMILY POL'Y INST. OF CAL., CAL. CHILD WELFARE CO-INVESTMENT P'SHIP, CHILD WELFARE SERVICES AND FOSTER CARE AT A GLANCE 1-2 (2010), available at <http://www.co-invest.org/files/CA-CWS-System-Overview.pdf> [hereinafter FOSTER CARE AT A GLANCE] (on file with the *McGeorge Law Review*) (The purpose of [California's Child Welfare System] is to protect children from abuse and neglect" and that "foster care is one of the options provided through the child welfare system . . . intended as a temporary solution to keep children safe"); see also CAROLINE DANIELSON & HELEN LEE, FOSTER CARE IN CALIFORNIA: ACHIEVEMENTS AND CHALLENGES, PUB. POL'Y INST. OF CAL. 3-4 (2010), available at http://www.ppic.org/content/pubs/report/R_510CDR.pdf (on file with the *McGeorge Law Review*) ("[T]he state's [fifty-eight] counties investigate hundreds of thousands of reports of suspected abuse or neglect annually. . . . [and] [i]f a report is substantiated, and the county concludes that the child's removal from his or her family is required, a dependency petition seeking that removal is filed with the juvenile dependency court, where a judge hears both sides and decides whether the petition is justified.").

2. B. NEEDELL ET AL., CHILD WELFARE SERVICES REPORTS FOR CALIFORNIA, U. C. BERKELEY CTR. FOR SOC. SERVS. RESEARCH (Apr. 1, 2013), available at http://cssr.berkeley.edu/ucb_childwelfare/PIT.aspx (on file with the *McGeorge Law Review*).

3. FOSTER CARE AT A GLANCE, *supra* note 1, at 3.

4. CAL. WELF. & INST. CODE § 16000.1(a)(1) (West 2011).

5. HEALTH & SAFETY CODE §§ 1530.5-1530.8 (West 2008).

6. ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 352, at 2.

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There is a plethora of evidence indicating that exposure to secondhand smoke is harmful to human health, especially to infants and children.⁸ Studies indicate that “[c]hildren exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, and more severe asthma.”⁹ Children’s bodies are growing and developing, including their immune systems, putting them at an increased risk of illness from secondhand smoke exposure.¹⁰ Additionally, unlike adults, children are unable to remove themselves from environments where they are exposed to secondhand smoke.¹¹ For example, children are most often exposed to secondhand smoke within their residence.¹²

Compared to children generally, the risk of harm posed by exposure to secondhand smoke is even greater among foster children.¹³ Foster children typically have a higher rate of chronic health conditions, including asthma and respiratory illness, than children outside of the foster care system.¹⁴ Several

(Apr. 24, 2013).

7. See KERRY CORK, PUB. HEALTH LAW CTR, SMOKE-FREE FOSTER CARE: POLICY OPTIONS AND THE DUTY TO PROTECT 1 (2d ed. 2013), available at <http://publichealthlawcenter.org/sites/default/files/phlc-policybrief-smokefreefostercare-2013.pdf> [hereinafter SMOKE-FREE FOSTER CARE BRIEF] (on file with the *McGeorge Law Review*) (describing how “[f]oster children, who suffer a disproportionate number of chronic health conditions, including a high prevalence of respiratory illness, are especially susceptible to the health hazards of secondhand smoke”).

8. CAL. ENVTL. PROT. AGENCY, SECONDHAND TOBACCO SMOKE & CHILDREN’S HEALTH BROCHURE, available at oehha.ca.gov/air/environmental_tobacco/pdf/smoke2final.pdf [hereinafter SECONDHAND SMOKE BROCHURE] (last visited Feb. 8, 2014) (on file with the *McGeorge Law Review*).

9. U.S. DEP’T OF HEALTH & HUMAN SERVS., CHILDREN AND SECONDHAND SMOKE EXPOSURE, EXCERPTS FROM THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: A REPORT OF THE SURGEON GENERAL 6 (2007), available at http://www.surgeongeneral.gov/library/reports/smoke_exposure/fullreport.pdf (on file with the *McGeorge Law Review*).

10. See SECONDHAND SMOKE BROCHURE, *supra* note 8 (discussing how children “can be more sensitive to the effects of secondhand smoke [than adults]” and it is “especially dangerous to their developing lungs and immune systems”).

11. See SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 352, at 4 (June 26, 2013) (observing that children have “little control over their indoor environments”).

12. U.S. DEP’T OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: A REPORT OF THE SURGEON GENERAL, SECONDHAND SMOKE EXPOSURE IN THE HOME FACT SHEET (2007), <http://www.surgeongeneral.gov/library/reports/secondhandsmoke/factsheet4.html> (on file with the *McGeorge Law Review*).

13. See SMOKE-FREE FOSTER CARE BRIEF, *supra* note 7, at 18 (describing that “foster children [are] a uniquely vulnerable population...to the hazards of tobacco smoke”).

14. U.S. DEP’T OF HEALTH & HUMAN SERVS., ADMIN. FOR CHILDREN & FAMILIES, NATIONAL SURVEY OF CHILD AND ADOLESCENT WELL-BEING, NO. 7: SPECIAL HEALTH CARE NEEDS AMONG CHILDREN IN CHILD WELFARE RESEARCH BRIEF 1–2 (2007), available at http://www.acf.hhs.gov/sites/default/files/opre/special_health.pdf (on file with the *McGeorge Law Review*); see also CECILIA CASANUEVA ET AL., U.S. DEP’T OF HEALTH & HUMAN SERVS., ADMIN. FOR CHILDREN & FAMILIES, NATIONAL SURVEY OF CHILD AND ADOLESCENT WELL-BEING, NSCAW II WAVE 2 REPORT: CHILD WELL-BEING 4 (2012), available at http://www.acf.hhs.gov/sites/default/files/opre/nscaw2_intro_0.pdf (on file with the *McGeorge Law Review*) (reporting that “[c]hildren living in formal kin care were significantly more likely to be reported in *very good* or *excellent* health than children living in foster care or group home,” and that “[c]hildren living in informal kin care were less likely to have excellent/good overall health than children living in-home with parents or in

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reports indicate that the volatile environments foster children are exposed to prior to their placement into CWS contribute to these chronic health conditions.¹⁵ Since foster children are distinctly vulnerable to developing health problems, exacerbated by exposure to secondhand smoke, the need for a smoke-free environment in foster care is vital.¹⁶

II. LEGAL BACKGROUND

Existing California law protects the health, safety, and welfare of children in foster care.¹⁷ While California does not currently have any statewide law expressly prohibiting smoking within a foster care facility,¹⁸ three California counties and several other states have established smoke-free foster home policies.¹⁹

formal kin care”).

15. SMOKE-FREE FOSTER CARE BRIEF, *supra* note 7, at 2 (explaining that “[foster] children face a disproportionate number of health-related challenges due to backgrounds that can include physical and emotional abuse, neglect, malnutrition, and in-utero alcohol or drug exposure”). Such environments lead to various chronic health conditions. See MARK D. SIMMS ET AL., PEDIATRICS, HEALTH CARE NEEDS OF CHILDREN IN THE FOSTER CARE SYSTEM 909 (Vol. 106 No. 4, 2000), available at http://pediatrics.aappublications.org/content/106/Supplement_3/909.full.pdf (on file with the *McGeorge Law Review*) (explaining that “[m]any children enter foster care with chronic health, developmental, and psychiatric disorders, reflecting the neglect and abuse experienced before placement in addition to the trauma from being separated from their parents”). Since many children are removed from their families and placed into foster care due to abuse and neglect, many enter foster care with pre-existing health conditions. *Id.* at 917 (concluding that “[a]s a result of the circumstances that lead to placement, children entering the foster care system often have serious health and mental health disorders”).

16. See *id.* at 1 (“Foster children, who suffer a disproportionate number of chronic health conditions, including a high prevalence of respiratory illness, are especially susceptible to the health hazards of secondhand smoke.”).

17. CAL. HEALTH & SAFETY CODE § 1501.1 (West 2013); see also CAL. WELF. & INST. CODE § 16000(a) (West 2011) (stating that the purpose of foster care placement is to provide for the welfare of the child).

18. See ASSEMBLY COMMITTEE ON HUMAN SERVICES, COMMITTEE ANALYSIS OF AB 352, at 4 (Apr. 16, 2013) (“Although not specifically stated in statute, the California Code of Regulations (CCR) prohibits smoking in the home and on the grounds of the home” of a foster care facility, though “this prohibition. . . does not apply to [foster family homes] and [certified family homes] overseen by [foster family agencies].”).

19. SMOKE-FREE FOSTER CARE BRIEF, *supra* note 7, at 9, 14 (including Monterrey, San Luis Obispo, and Santa Cruz counties in California, as well as Alaska, Arizona, Colorado, Illinois, Iowa, Kansas, Maine, Maryland, Montana, New Jersey, North Dakota, Oklahoma, Oregon, Pennsylvania, Texas, Vermont, Washington, and Wyoming with varying smoke-free foster care policies and laws); DIANE F. REED, KATE KARPILOW, UNDERSTANDING THE CHILD WELFARE SYSTEM IN CALIFORNIA: A PRIMER FOR SERVICE PROVIDERS AND POLICYMAKERS 9 (2d ed. 2009), available at http://www.ccrwf.org/wp-content/uploads/2009/03/final_web_pdf.pdf (on file with the *McGeorge Law Review*) (explaining that California is one of eleven states that follows a “state-administered/county-implemented model” of service administration, where the CDSS, as the central state proponent responsible for providing child welfare services, provides oversight and program regulation, while the fifty-eight individual counties run their own child welfare programs).

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A. *The California Community Care Facilities Act*

The California Community Care Facilities Act (CCFA) regulates California’s community care facilities for the “mentally ill, developmentally and physically disabled, and children and adults who require care or services by a facility or organization” licensed under the Act.²⁰ Foster care facilities are community care facilities falling under the CCFA.²¹ The CCFA designates the California Department of Social Services (CDSS) as the authority to license and certify foster family residences and regulate community care facilities for foster care organizations.²²

In order to become licensed or certified to provide residential foster care, the CCFA requires providers to meet and maintain various safety and sanitation standards.²³ These standards differ depending on the type of facility.²⁴ A violation of the CCFA is a misdemeanor, punishable by a fine or confinement.²⁵

B. *Smoke-Free Foster Care Laws Existing in California and Other States*

Prior to Chapter 292, three California counties and eighteen other states had established smoke-free foster home policies.²⁶ While these policies vary, they are generally enforced through a licensing process similar to the CCFA and all aim to protect the health of children in foster care facilities.²⁷

III. CHAPTER 292

Under the CCFA, Chapter 292 requires “[g]roup homes, foster family agencies, small family homes, transitional housing placement providers, and crisis nurseries” to provide a smoke-free environment.²⁸ Chapter 292 prohibits

20. CAL. HEALTH & SAFETY CODE §§ 1500, 1501(a) (West 2008). The CCFA defines “community care facility” as a “facility, place, or building maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services from children, adults, or children and adults.” *Id.* § 1502(a).

21. *Id.* § 1502(a).

22. *Id.* §§ 1506, 1530.5(a), 1530.6, 1530.8(a); *see also* Dep’t of Soc. Servs., *History of CCL*, CA.GOV, <http://www.ccl.ca.gov/PG521.htm> (last visited July, 5, 2013) (on file with the *McGeorge Law Review*) (describing how licensing regulations for community care facilities falls under the California Department of Social Services).

23. *Id.* § 1531.

24. *Id.*

25. *Id.* § 1540(a).

26. *See supra* note 19 and accompanying text.

27. *Id.* at 9–10, 19–23.

28. HEALTH & SAFETY § 1530.7(1)(a) (enacted by Chapter 292); *id.* § 1502 (defining “foster family agency” as “any organization engaged in the recruiting, certifying, and training of . . . foster parents, or in finding homes or other places for placement of children for temporary or permanent care . . . as an alternative to a group home”); *id.* (defining “transitional housing placement providers” as “an organization licensed . . . to

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any person “licensed or certified to provide residential care in a foster family home or certified family home” from smoking inside the premises, allowing anyone else to smoke inside the premises, or smoking in the physical presence of a child, including outdoors.²⁹ Additionally, Chapter 292 prohibits any person who is “licensed or certified to provide residential foster care” from smoking in any motor vehicle “regularly used to transport the child.”³⁰

IV. ANALYSIS

Chapter 292 aims to protect foster children, a group distinctively prone to poor health conditions, from the devastating effects of secondhand smoke exposure.³¹ Although there have been some concerns expressed nationally over the enactment of smoke-free policies, the positive effects of similar regulations across the country indicate the need for a smoke-free foster care law in California.³²

A. *Protecting Foster Children from the Consequences of Secondhand Smoke*

The State of California is responsible for the well-being of foster children and spends millions of dollars to provide healthcare services to them.³³ Thus, the duty to enact policies that protect the health of foster children is imperative.³⁴ Secondhand smoke exposure causes serious health implications, particularly to

provide transitional housing to foster children” who are at least sixteen years old, but not older than eighteen years old “to promote their transition to adulthood”); *id.* (defining “small family home” as “any residential facility . . . that provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care”); *id.* (defining “foster family home” as “any residential facility providing 24-hour care to six or fewer foster children that is owned, leased, or rented and is the residence of the foster parent”); *id.* § 1516(a) (defining “crisis nursery” as “a facility licensed . . . to provide short-term, 24-hour nonmedical residential care and supervision for children under six years of age, who are voluntarily placed for temporary care by a parent or legal guardian due to a family crisis or stressful situation for no more than 30 days”).

29. HEALTH & SAFETY § 1530.7(1)(b) (enacted by Chapter 292).

30. *Id.* § 1530.7(1)(c) (enacted by Chapter 292).

31. See ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 352, at 2 (Apr. 24, 2013) (explaining that foster children need such legislation in order to live in “safe and healthy environment[s]”).

32. See SMOKE-FREE FOSTER CARE BRIEF, *supra* note 7, at 9, 14 (describing opponents’ concerns to similar legislation, and “smoke-free foster care policies in effect” among twenty-one states).

33. See CAL. WELF. & INST. CODE § 16000.1 (West 2011) (“The state has a duty to care for and protect the children that the state places into foster care, and as a matter of public policy, the state assumes an obligation of the highest order to ensure the safety of children in foster care”); see also ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 352, at 2 (Apr. 24, 2013) (“California currently spends approximately one billion dollars every year for board, care and services for foster children.”).

34. See ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 352, at 2 (Apr. 24, 2013) (explaining that California’s “health care costs for tobacco-related medical conditions will almost certainly rise” when foster children live in an environment where they are exposed to secondhand smoke).

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children, and even more so in foster children.³⁵ Chapter 292 seeks to reduce foster children’s exposure to secondhand smoke, thereby decreasing additional health conditions suffered by foster children.³⁶ Further, Chapter 292’s enactment may reduce the costs for medical services required by foster children who suffer the consequences of secondhand smoke exposure.³⁷

Chapter 292 specifically prohibits “any person licensed or certified to . . . provide residential care in a foster family home or certified family home” from smoking “inside the facility.”³⁸ Although not specifically defined in the statute, “inside the facility” encompasses any confined, indoor space of the home, including garages and bathrooms.³⁹ Compared to some states’ smoke-free policies, Chapter 292 offers greater protections to children because a foster parent cannot smoke or allow another person to smoke anywhere inside the facility at any time.⁴⁰

B. Concerns Regarding Smoke-Free Foster Care Policies

While there was no registered opposition to Chapter 292,⁴¹ concerns have been expressed nationally regarding the adoption of similar smoke-free foster care laws.⁴²

1. Foster Parent Recruitment

Opponents of smoke-free policies in other states fear that smokers who might otherwise become foster parents will not do so because of the regulations.⁴³ While there is no concrete data to determine whether this is a valid concern, in 2009–2010, Minnesota’s Hennepin County Human Services and Public Health Department interviewed fifteen states’ foster care managers on their experiences since the implementation of their states’ smoke-free foster care policies.⁴⁴ The

35. SMOKE-FREE FOSTER CARE BRIEF, *supra* note 7, at 1.

36. See ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 352, at 2 (Apr. 24, 2013) (“AB 352 will ensure that foster children, already one of the most vulnerable populations in our state [to health conditions], enjoy a safe and healthy environment to live and thrive.”).

37. See *supra* note 36 and accompanying text (regarding the State’s costs for healthcare).

38. CAL. HEALTH & SAFETY CODE § 1530.7(1)(b) (enacted by Chapter 292).

39. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 352, at 1 (Apr. 23, 2013).

40. See ALASKA ADMIN. CODE tit. 7, § 10.1085(c) (2010) (“Smoking in a foster home or foster group home must be limited to outside the home, or in a well-ventilated area away from the immediate living area, and only after submitting a plan acceptable to the department that addresses how children in care will be protected from smoke.”); see also FLA. ADMIN. CODE ANN. r. 65C-13.030(5)(f)(11) (2013) (requiring that “when children are present, rooms shall be free of tobacco smoke,” regarding the interior environment of the foster home).

41. ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 352, at 5 (Apr. 24, 2013).

42. SMOKE-FREE FOSTER CARE BRIEF, *supra* note 7, at 9.

43. *Id.* at 11.

44. *Id.* at 15; see also HENNEPIN CNTY. HUMAN SERVS. & PUB. HEALTH DEP’T, PUB. HEALTH

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informal study concludes, “prohibiting smoking in foster care homes did not appear to impair recruitment of foster parents.”⁴⁵ Since foster parents are already subject to several licensure requirements to determine eligibility, the smoking restriction should play an insignificant role in the decision to become a foster parent.⁴⁶ Additionally, nothing in Chapter 292 requires a foster parent to quit smoking altogether; Chapter 292 only requires a foster parent to refrain from smoking inside his or her home or on the outside premises of the home in the presence of a foster child.⁴⁷ Further, Chapter 292 is limited to the persons “licensed or certified to provide residential care in a foster family home” and does not extend to relatives or other nonrelative caregivers within their respective homes.⁴⁸ This exemption was created specifically to remove any unwillingness to become a potential “placement for foster youth.”⁴⁹

2. Ensuring Compliance

Some opponents argue that ensuring compliance with smoke-free policies in foster care is next to impossible.⁵⁰ While the licensing enforcement process in California is well-established,⁵¹ the concern is that a foster parent will smoke in the home or vehicle and remove all evidence before anyone can report the

PROMOTION, EFFECT OF OTHER STATES’ SMOKING PROHIBITIONS ON CHILD FOSTER CARE 1–2 (2011), available at <http://www.hennepin.us/files/HennepinUS/HSPHD/Community%20Services/Public%20Health%20Promotion/Health%20at%20the%20Community%20Level/Report%20on%20Smoking%20in%20Child%20Foster%20Care%20Facilities.pdf> [hereinafter HENNEPIN STUDY] (on file with the *McGeorge Law Review*) (including the states surveyed: Alaska, Colorado, Illinois, Kansas, Maine, Maryland, Montana, North Dakota, Oklahoma, Oregon, Pennsylvania, Texas, Vermont, Washington, and Wyoming).

45. HENNEPIN STUDY, *supra* note 44, at 7.

46. See generally SMOKE-FREE FOSTER CARE BRIEF, *supra* note 7, at 9 (“[F]oster parents are obliged to comply with site visits, inspections, and other policy restrictions on their autonomy and privacy, since the state is ultimate legal guardian of the child and has both the authority and obligation to take necessary measures to ensure the health and well-being of foster children.”).

47. ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 352, at 2 (Apr. 24, 2013).

48. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 352, at 2 (June 26, 2013). For example, under Chapter 292, if a foster child visits either a relative or a nonrelative extended family member in that relative’s or nonrelative extended family member’s home, then that person can freely smoke in his home even in the presence of that foster child. *Id.* The term “relative” is defined as “an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words ‘great,’ ‘great-great,’ or ‘grand,’ or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.” CAL. WELF. & INST. CODE § 319(f)(2) (West 2008). The term “nonrelative extended family member” is defined as “any adult caregiver who has an established familial or mentoring relationship with the child.” *Id.* at § 326.7.

49. ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 352, at 2 (Apr. 24, 2013).

50. SMOKE-FREE FOSTER CARE BRIEF, *supra* note 7, at 11.

51. See CAL. CODE REGS. tit. 22, § 80051–80059 (2013) (outlining the enforcement provisions of the general licensing requirements for community care licensing).

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activity or CWS can make a compliance visit.⁵² However, while it is not outside the realm of possibility, it seems unlikely that a foster parent who must comply with several licensing requirements would risk losing licensure by violating the smoke-free policy.⁵³ Further, the Hennepin County informal study addressed the issue: thirteen states reported no issues with compliance and two reported a few incidences of noncompliance, which were resolved with no penalties.⁵⁴

C. Will Chapter 292 Protect Foster Kids from Secondhand Smoke?

Although eighteen states currently have smoke-free foster care policies similar to Chapter 292, so far there have been no formal studies conducted on the overall effectiveness of these policies.⁵⁵ However, the Surgeon General asserts that the complete eradication of all indoor smoking is the only way to prevent secondhand smoke exposure inside the home; ventilation or separation does not prevent exposure to secondhand smoke, and no level of exposure is without risk.⁵⁶ Smoke-free environments in foster care facilities and vehicles used to transport foster children will significantly reduce children's exposure to secondhand smoke.⁵⁷

Although Chapter 292 limits where a residential foster care provider can smoke, it does not extend to relatives or nonrelative extended family members within their respective homes.⁵⁸ Thus, while compliance with Chapter 292 will significantly reduce a foster child's exposure to secondhand smoke within the foster home, it may not completely shield a child from contact with involuntary smoke during his or her time in a foster care facility.⁵⁹

Additionally, Chapter 292 prohibits a licensed or certified caregiver from smoking within any vehicle "regularly used to transport" a foster child.⁶⁰

52. SMOKE-FREE FOSTER CARE BRIEF, *supra* note 7, at 11.

53. *See id.* (discussing that there is an "assumption . . . that many foster parents would be willing to violate an agreement with a state agency and jeopardize the health of their foster children and their foster family status rather than comply with a smoke-free policy").

54. HENNEPIN STUDY, *supra* note 46, at 5–6.

55. SMOKE-FREE FOSTER CARE BRIEF, *supra* note 7, at 15.

56. U.S. DEP'T OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: A REPORT OF THE SURGEON GENERAL, SECONDHAND SMOKE EXPOSURE IN THE HOME FACT SHEET (2007), available at <http://www.surgeongeneral.gov/library/reports/secondhandsmoke/factsheet4.html> (on file with the *McGeorge Law Review*).

57. *See id.* ("Smoke-free rules in homes and vehicles can reduce secondhand smoke exposure among children and nonsmoking adults.").

58. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 352, at 2 (June 26, 2013); *see supra* note 48 and accompanying text (defining the terms "relative" and "nonrelative extended family member").

59. *See generally* ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 352, at 2 (Apr. 24, 2013) (stating that "the measure also exempts relatives and nonrelative extended family relative caregivers so as to not de-incentivize [foster parent] willingness to be a placement for foster youth").

60. CAL. HEALTH & SAFETY CODE § 1530.7(1)(c) (enacted by Chapter 292).

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However, the term “regularly” is not defined in the statute and the term is not concrete.⁶¹ While the term was included because it was infeasible to prevent a “foster child from riding in *any* vehicle in which a licensee has smoked,” the imprecise term may allow the foster child to be exposed to remnants of secondhand smoke in a vehicle.⁶²

V. CONCLUSION

The enactment of Chapter 292 adds California to the list of states that have adopted laws and policies requiring a smoke-free environment in foster care facilities.⁶³ While there may be some concerns regarding the adoption of smoke-free policies, protecting foster children from the dangers of secondhand smoke is of primary importance.⁶⁴ There is no denying secondhand smoke is toxic and harmful to children and that foster kids are an at-risk population requiring considerable health protections.⁶⁵ Chapter 292 marks a significant stride to defend California’s foster kids from a known, life-threatening danger.⁶⁶

61. See CAL. HEALTH & SAFETY CODE § 1502 (West 2008 & Supp. 2013) (omitting the definition of the term “regularly”).

62. See generally SENATE HUMAN SERVICES COMMITTEE, COMMITTEE ANALYSIS OF AB 352, at 6 (Apr. 23, 2013) (noting that “concerns have been raised about the practicality of preventing a foster child from riding in any vehicle where a licensee has smoked,” so to clarify, “regularly used to transport a child” was added to the definition of a “smoke-free vehicle”).

63. See PUB. HEALTH LAW CTR., OVERVIEW OF U.S. SMOKE-FREE FOSTER CARE REGULATIONS 1–7 (2013), available at http://publichealthlawcenter.org/sites/default/files/phlc-table-smokefree-foster-care-2013_0.pdf (on file with the *McGeorge Law Review*) (compiling a table of states and corresponding smoke-free foster care policies that have been adopted or are pending enactment, most of which are similar to Chapter 292).

64. See SMOKE-FREE FOSTER CARE BRIEF, *supra* note 7, at 9 (describing opponents’ concerns to similar legislation); see also CAL. WELF. & INST. CODE § 16000(a) (West 2011) (stating that the purpose of foster care placement is to provide for the welfare of the child).

65. See *supra* note 7 and accompanying text (describing foster children’s susceptibility to health conditions).

66. See ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 352, at 4 (Apr. 24, 2013) (“It is time to make this statewide regulation to protect every foster child.”).