

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Alex Lee, Chair

AB 2282 (McKinnor) – As Introduced February 8, 2024

SUBJECT: Family reunification services

SUMMARY: Allows parents or guardians who have been convicted of a violent felony to be provided with family reunification services with their child as long as the violent felony was not against a child.

EXISTING LAW:

- 1) Establishes the juvenile court with jurisdiction over children who are subject to abuse or neglect. (Welfare and Institutions Code [WIC] § 300)
- 2) Establishes that the purpose of the juvenile court dependency system is the maximum safety and protection for children who are currently being abused, neglected, or exploited. Provides that the focus is on the preservation of the family, as well as the safety, protection, and physical and emotional well-being of the child. (WIC § 300.2.)
- 3) Requires that if, at the initial hearing, the juvenile court orders a child removed from their parent or guardian due to abuse or neglect, the court to order that child welfare reunification services be provided to the family as soon as possible in order to reunify the child with their family, if appropriate. (WIC § 319(e))
- 4) Requires the court, at the dispositional hearing, to order a social worker to provide child welfare services to a child who has been removed from their parents' custody and to the parents in order to support the goal of reunification, for a specified time period, except under certain circumstances. Provides that children and families in the child welfare system should typically receive a full six months of reunification services if the child is under three years of age, and twelve months if the child is over three years of age, but that may be extended up to 18 or 24 months, as provided. (WIC § 361.5(a))
- 5) Provides that reunification services under 4) above, need not be provided if the court finds, by clear and convincing evidence, that specified conditions exist, including:
 - a) The parent is suffering from a mental disability that renders the parent incapable of using the reunification services;
 - b) The parent has caused the death of another child through abuse or neglect;
 - c) The child or a sibling of the child has on more than one occasion been adjudicated a dependent as a result of physical or sexual abuse and removed from the custody of the parent or guardian because of such abuse;
 - d) The parent has been convicted of a violent felony; or,
 - e) The parent has a history of drug or alcohol abuse and has failed to comply with treatment programs as provided. (WIC § 361.5(b))

- 6) Prevents a court from ordering reunification services for a parent in specified situations, including the situations set forth in 5) above, unless the court finds, by clear and convincing evidence, that reunification is in the child's best interest. (WIC § 361.5(c))
- 7) Defines all of the following as “violent felonies”:
 - a) Murder or voluntary manslaughter;
 - b) Mayhem;
 - c) Rape;
 - d) Sodomy;
 - e) Oral copulation;
 - f) Lewd or lascivious act on a child under 14 years old, or with force;
 - g) Any felony punishable by death or imprisonment in the state prison for life;
 - h) Any felony in which the defendant inflicts great bodily injury on a person other than an accomplice, or any felony in which the defendant uses a firearm which use has been charged and proved;
 - i) Any robbery;
 - j) Arson that causes great bodily injury or causes an inhabited structure to burn;
 - k) Sexual penetration;
 - l) Attempted murder;
 - m) Exploding or igniting a destructive device or explosive;
 - n) Kidnapping;
 - o) Assault with the intent to commit b) – f)
 - p) Continuous sexual abuse of a child;
 - q) Carjacking;
 - r) Rape or sexual penetration, in concert;
 - s) Extortion that would constitute a felony;
 - t) Threats to victims or witnesses that would constitute a felony;
 - u) Any burglary of the first degree wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary;

- v) Any crime that is subject to a sentence enhancement, as specified; and,
- w) Using or employing a weapon of mass destruction. (Penal Code § 667.5(c))

FISCAL EFFECT: Unknown, this bill has not been analyzed by a fiscal committee.

COMMENTS:

Background: *Child Welfare Services.* California's child welfare services system was established with the goal of protecting youth from abuse and neglect and is designed to provide safety, health, and overall well-being of children. When a child is identified as being at risk of abuse or neglect, reports can be made to either law enforcement or a county child welfare agency. Often, these reports are submitted by mandated reporters who are legally required to report suspicion of child abuse or neglect due to their profession, such as a teacher or healthcare provider. When a mandated reporter submits a report to either law enforcement or the county child welfare agency, a social worker determines whether the allegation is of suspected abuse, neglect, or exploitation, and creates a case plan which includes the provision of relevant services. The child's social worker and the court collaborate to evaluate and review the circumstances of each case, seeking either reunification or placement outside of the home as a way for the child to achieve permanency.

The court will then determine whether the allegations are true and if the child can remain at home. If the court orders a child to be placed outside of the home, the parent usually receives court-ordered family reunification services. Upon completion of the services, in addition to making any changes or improvements described in the case plan, the court may dismiss the child's court case and the county welfare department case will also be closed. If a parent does not participate in the services set forth in the reunification plan, the court can terminate the services, and therefore change the reunification goal to one of finding a permanent home with a caring adult.

California's child welfare services programs are administered by the 58 individual counties with each county organizing and operating its own program of child protection based on local needs while adhering to state and federal regulations. When a child welfare case is open, counties are the primary governmental entity interacting with children and families when addressing issues of child abuse and neglect and are responsible, either directly or through providers, for obtaining or providing the interventions and relevant services to protect children and assist families with issues related to child abuse and neglect.

The California Department of Social Services (CDSS) secures federal funding to support child welfare services programs, provides statewide best practices training for social workers, and conducts program regulatory oversight and administration, and is responsible for the development of policy while also providing direct services such as adoption placements.

As of January 1, 2024, there are 43,633 youth between birth and 20 years of age in foster care in California.

Dependency Court Procedure. When a child is removed from the custody of their parent, they are temporarily placed within the jurisdiction of the child welfare system until a determination about the child's welfare is made. Within 48 hours after a child is taken into temporary custody, the county social worker must file a petition with the court requesting that a detention hearing

take place in order to determine if further detention of the child is necessary. If a petition to declare the child a dependent of the court is filed by the county social worker, then the detention hearing must be held within 48 hours of the petition being filed. At the detention hearing, the social worker outlines the allegations of abuse or neglect made against the parent and why it is necessary to remove the child from the custody of their parent. If the court determines that removing the child from their parents' custody is in the best interests of the child, the child is then removed. The permanent placement of the child is determined at a later date.

Once a child has been removed from the custody of their parents, a jurisdictional hearing must take place within 15 days. It is at the jurisdictional hearing that the court determines whether the allegations outlined in the social worker's petition are true. If the allegations are deemed to be true, then the child is determined to be within the jurisdiction of the juvenile court and a dispositional hearing must be held within 60 days of the initial detention hearing in order to determine the permanent placement of the child.

At the dispositional hearing, the court determines the parameters of the family reunification plan, which includes where and with whom the child will live, be it with relatives or in a foster family home. The reunification plan also can entail recommendations for parents such as parenting classes, anger management, counseling, substance abuse counseling and testing, sexual abuse counseling, parenting training, and anger management.

Except for limited circumstances, if the child is not returned to the parent's custody at the 18-month permanency reviewing hearing, the juvenile court is required to terminate reunification services and set a hearing to terminate parental rights. The court then determines whether reasonable services have been offered or provided to the parent or legal guardian, but the court's authority to set the hearing to terminate parental rights is not conditioned on whether reasonable services were provided.

Reunification Services. When a child is removed from their parents' custody and it is determined by the courts and in speaking with the child's social worker that the child would ultimately benefit from being returned or reunited with the family, the court may order reunification services in order to address the underlying issues or needs of the family that led to the child's removal in the first place.

Reunification services include, but are not limited to: family therapy, parenting classes, substance use disorder treatment, respite care, parent support groups, home visiting programs, and services deemed necessary in order to facilitate a child's reunification with their parents. For children under three years of age, current law allows six months of reunification services; and for children over three years of age, twelve months of reunification services are to be offered. Extensions of services are available if the court determines that there is substantial probability that a child will return to their parents' custody within the extended time period.

In an effort to balance the best interests of the child with the parent's ability to address the issues that brought them into the child welfare services system and actively participate in reunification efforts, courts are permitted to bypass reunification services for some parents. In California, the bypassing of reunification services can occur under specific circumstances if the parents meet certain criteria:

- History of substance abuse: If a parent has an extensive, abusive, and chronic history of drug or alcohol use, the court may decide to bypass reunification services.

- Conviction of a violent felony.
- The parent has caused the death of another child through abuse or neglect or the child or a sibling of the child has on more than one occasion been adjudicated a dependent as a result of physical or sexual abuse and removed from the custody of the parent or guardian because of such abuse.
- Resistance to Prior Treatment: The parent must have resisted court-ordered treatment for substance abuse during the three years immediately before the filing of the petition.
- Unknown Whereabouts or Mental Disability: Reunification services need not be provided if the court finds, by clear and convincing evidence: the whereabouts of the parent are unknown; the parent is suffering from a mental disability that renders them incapable of utilizing reunification services.

This bill would allow reunification services to be provided to a parent who was convicted of a violent felony as long as that felony was not against a child.

Other States: New York: The court considers the best interests of the child when determining whether to provide reunification services. While a felony conviction does not automatically disqualify a parent, the court assesses the parent's ability to provide a safe and stable environment for the child. If the felony conviction directly impacts the child's well-being, reunification services may be limited or denied.

Texas: Allows for the termination of parental rights if a parent has been convicted of certain felonies, including violent offenses. However, the court still evaluates the specific circumstances and considers the child's safety and welfare. Reunification services may be provided if the parent demonstrates rehabilitation and poses no risk to the child.

Florida: Also considers the child's best interests. A parent's felony conviction does not automatically preclude reunification services. Instead, the court examines factors such as the nature of the offense, the parent's efforts toward rehabilitation, and the child's safety. If reunification is deemed beneficial for the child, services may be offered.

Illinois: A parent's felony conviction does not automatically disqualify them from reunification services. The court evaluates the circumstances, including the nature of the offense, the parent's rehabilitation efforts, and the child's well-being. If reunification is in the child's best interest, services may be provided.

Ohio: Considers the child's safety and well-being. A parent's felony conviction is not an absolute barrier to reunification services. The court assesses the parent's efforts toward rehabilitation, the nature of the offense, and the child's needs. If reunification benefits the child, services may be offered.

Alignment with Recent Policy: SB 354 (Skinner), Chapter 687, Statutes of 2021, sought to remove barriers to placement with relatives by expanding eligibility for criminal record exemption requests allowing for more child-specific resource family approvals (RFAs) among other provisions. SB 354 added an additional background check criteria that when applicable, allows for child-specific approval for relatives only. In addition to the revised list of non-exemptible crimes and the expanded simplified exemption criteria which applies to all resource

family applicants and associated individuals, SB 354 provided additional discretion to consider granting criminal record exemptions specifically when an RFA applicant is a relative. Effective January 1, 2022, existing law authorizes the review of criminal record exemption requests from relative RFA applicants, and adults residing in the relative applicant's home, provided the approval is to care for a specific child and the applicant/resident does not have a felony conviction within the last five years for any of the following crimes: Child abuse or neglect; spousal abuse; rape; sexual assault; homicide; or any other crime against a child, including child pornography.

This bill aligns with the perspective that a criminal conviction alone does not preclude a person from being an appropriate caregiver to a child, and would simply allow parents to have the opportunity to be provided with reunification services, as long as their violent felony was not against a child.

Additionally, in re S.D. (2002) 99 Cal. App. 4th 1068, the California Court of Appeal held that parents should not lose their children simply due to their incarceration if they can arrange for their child's care. However, the Author and Sponsors claim that existing law conflicts with this principle. Although an incarcerated parent cannot be denied custody due to their incarceration alone, current law denies a parent, incarcerated or free, the right to regain custody of a child if there is a past conviction for a violent felony. The Sponsors contend that this statute unfairly shifts the burden to the parent to prove, by a high standard, that reunification is in the child's best interest.

Author's Statement: According to the Author, "[This bill] seeks to help reunite families by allowing people with a past violent felony conviction the opportunity to be reunited with their children. This would benefit children by increasing the likelihood that they can return safely to their family, therefore reducing the need for foster placements. Furthermore this would help formerly incarcerated parents retain the positive family relationships that reduce recidivism."

Equity Implications: It is not uncommon for parents in dependency court to have a conviction for offenses defined as a violent felony, which includes offenses such as robbery and carjacking. However, a parent's criminal history does not necessarily have a bearing on a child's safety, particularly if the offense happened long before they became a parent.

Data show that many parents with involvement with the child welfare system have been incarcerated. Statistics show that 11.4% of Black children and 3.5% of Latino children have an incarcerated parent (as opposed to 1.8% of white children). While the majority of states bar reunification efforts for parents with a conviction related to the harm of a child, California law provides no exception for those convictions unrelated to any harm to a child. In fact, according to the Sponsors, California presents the most rigid barriers to reunification, with the broadest list of applicable convictions and no requirement that a child safety risk be shown. This bill would limit criminal convictions used to deny reunification services to families with child welfare involvement and would only permit reunification services to be denied to the most serious and violent felons who have endangered children.

Double referral: This bill was previously heard in the Assembly Judiciary Committee on April 9, 2024, and was approved on an 8-0 vote.

RELATED AND PRIOR LEGISLATION:

AB 937 (McKinnor), Chapter 458, Statutes of 2023, required a juvenile court to order, except in specified very limited circumstances, six additional months of reunification services to a parent or guardian when the court finds at a permanency review hearing that reasonable reunification services have not been provided to the parent or guardian.

AB 954 (Bryan), Chapter 552, Statutes of 2023, clarified that a parent or guardian shall not be considered to be non-compliant with the court-ordered case plan when there is evidence that the parent or guardian is unable to pay for a court-ordered service, or when payment for a service would create an undue financial hardship to the parent or guardian.

AB 1134 (McKinnor) of 2023, would have allowed reunification services to be provided to the parent of a child who had been convicted of a violent felony, unless the victim of the violent felony was a child under the custody of the parent or guardian. *AB 1134 died in the Assembly Judiciary Committee after the hearing was postponed by the committee.*

SB 1085 (Kamlager), Chapter 832, Statutes of 2022, prohibited a child from being found to be a dependent of the juvenile court solely due to: homelessness; indigence or other conditions of financial difficulty, including, but not limited to, poverty or the inability to provide or obtain clothing, home or property repair, or childcare. SB 1085 also stated legislative intent that families not be subject to the jurisdiction of the juvenile court nor should children be separated from their parents based on conditions of financial difficulty, including but not limited to a lack of food, clothing, shelter, or childcare.

AB 788 (Calderon), Chapter 201, Statutes of 2021, clarified the meaning of "resisted" within current provisions that enable a juvenile dependency court to deny reunification services for a parent with a history of drug or alcohol abuse.

SB 354 (Skinner), Chapter 687, Statutes of 2021, adopted changes to the criminal background check process during the RFA process for relatives of children placed in the child welfare system; permitted the court to authorize placement of children with relatives in certain circumstances, regardless of the status of any criminal exemption or RFA; and, required, no later than January 1, 2024, CDSS to submit a report to the Legislature related to criminal record exemptions.

REGISTERED SUPPORT / OPPOSITION:**Support**

Dependency Legal Services (Co-Sponsor)
Los Angeles Dependency Lawyers, INC. (Co-Sponsor)
A New Way of Life Reentry Project
California Public Defenders Association
Dependency Advocacy Center
Ella Baker Center for Human Rights
Families Inspiring Reentry & Reunification 4 Everyone
Public Counsel
Root & Rebound

Opposition

None on file.

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