

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Alex Lee, Chair

AB 2752 (Calderon) – As Amended April 10, 2024

SUBJECT: Juvenile court: visitation

SUMMARY: Revises requirements for supervised and unsupervised visits between a parent and child involved in the dependency process. Specifically, **this bill:**

- 1) Requires a court, at a dependency review hearing, to order unsupervised visitation between a parent or legal guardian and a child, unless unsupervised visitation is contrary to the child's welfare and there is a substantial danger to the physical health of the child or the child is suffering severe emotional damage and the child's physical or emotional health cannot reasonably be protected without supervised visitation, or there is substantial evidence that the parent or legal guardian may flee the jurisdiction with the child.
- 2) Requires, if the court makes an order for supervised visitation, the court to specify the factual basis for its order and to order the agency to assess persons proposed by a parent or guardian to supervise the visitation. If, after assessment, no person has been approved to supervise the visit, the agency or its designee is required to supervise the visits at a time when both parent or guardian and child are available. Requires the court to order that the agency has discretion to liberalize the visitation to unsupervised unless the court finds that granting this discretion would be contrary to the child's safety.
- 3) Prohibits a determination that the parent or guardian was noncustodial, or that a child does not have an established relationship with the parent or guardian, from being the sole basis for a finding that unsupervised visitation would be contrary to the child's welfare.
- 4) Requires orders for visitation to provide a level of frequency and duration that is most conducive to quality family time.
- 5) Requires that visits between a dependent children and their parents or guardians to take place in the least restrictive setting that is most conducive to quality family time. Requires a social worker, when filing a supplemental report with the court prior to a hearing, to specify, if visitation has not been liberalized, what efforts have been put in place to liberalize the parent's or guardian's visits and why liberalization was contrary to the child's welfare. Requires a court to review and consider the social worker's report.
- 6) Provides that, if the juvenile court does not return the child to the parent or guardian at the final permanency review hearing, the juvenile court's findings constitute prima facie evidence that visitation between the parent or guardian and child does not need to be supervised. Requires any party seeking to maintain or institute supervised visitation to bear the burden to rebut this presumption by a preponderance of the evidence.
- 7) Recasts an existing provision that prohibits the court from issuing a visitation order that jeopardizes the safety of a child.

- 8) Sets forth the following requirements at the initial petition hearing following the removal of a youth from their home as a result of allegations of abuse or neglect:
 - a) Requires the court, at the initial petition hearing, to make an order regarding visitation between the child and the parent or guardian;
 - b) Requires the order to set forth a frequency and duration that is most conducive to quality family time, and to specify whether the visitation will be supervised pending the disposition hearing;
 - c) Requires, if the court makes an order for supervised visitation, the court to specify the factual basis for its order, and to order the county child welfare agency to assess persons proposed by a parent or guardian to supervise the visitation;
 - d) Requires, if, after assessment, no person has been approved to supervise the visit, the agency or its designee to supervise the visits at a time when both parent or guardian and child are available;
 - e) Requires the court to order that the agency has discretion to liberalize the visitation to unsupervised unless the court finds that granting this discretion would be contrary to the child's safety; and,
 - f) Requires visits to take place in the least restrictive setting that is most conducive to quality family time.
- 9) Specifies that in order to maintain ties between the parent or guardian and any siblings and the child, and to provide information relevant to deciding if, and when, to return a child to the custody of their parent or guardian, or to encourage or suspend sibling interaction, any order placing a child in foster care, and ordering reunification services, shall provide as follows:
 - a) Requires, subject to b) through f) below, for visitation between the parent or guardian and the child, visitation to be as frequent as possible, consistent with the well-being of the child. Further requires the court to order unsupervised visitation for the parent or guardian unless the court finds that unsupervised visitation is contrary to the child's welfare, and either of the following circumstances exist:
 - i) There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without having supervised visitation; or,
 - ii) There is substantial evidence that a parent or guardian of the child is likely to flee the jurisdiction of the court, and, in the case of an Indian child, fleeing the jurisdiction will place the child at risk of imminent physical damage or harm.
 - b) Prohibits a determination that the parent or guardian was noncustodial, or that a child does not have an established relationship with the parent or guardian, from being the sole basis for a finding that unsupervised visitation would be contrary to the child's welfare;

- c) Requires the order for visitation to set forth a frequency and duration that is most conducive to quality family time, whether the visitation will be supervised, and any other specific terms or restrictions for visitation;
- d) Requires, if the court makes an order for supervised visitation, the court to specify the factual basis for its order, and to order the county child welfare agency to assess persons proposed by a parent or guardian to supervise the visitation. Requires, if, after assessment, no person has been approved to supervise the visit, the agency or its designee to supervise the visits at a time when both parent or guardian and child are available. Requires the court to order that the agency has discretion to liberalize the visitation to unsupervised unless the court finds that granting this discretion would be contrary to the child's safety; and,
- e) Requires visits to take place in the least restrictive setting that is most conducive to quality family time.

EXISTING LAW:

- 1) Requires a social worker who files a dependency petition with the court to file a supplemental report prior to the initial petition hearing, and prior to subsequent review hearings, that sets forth the reasons why the child has been removed from the physical custody of the parents or guardians and, in the case of subsequent review hearings, the reasons for returning or not returning the child to the physical custody of the parent or guardian. Requires the court to review the supplemental report and make findings, as specified. (Welfare & Institutions Code [WIC] §§ 319(b)(f), 364(b), 366.21(c))
- 2) Requires the court hearing the dependency petition referenced in 1) above to order the release of the child from custody unless a showing has been made that the child falls within the jurisdiction of the court because the child has suffered, or is at substantial risk of suffering, serious physical or mental harm, or if the child's parent or guardian fails to provide the child with adequate food, clothing, shelter, or medical treatment. If the court orders the child detained, it shall state the facts on which the decision is based and state why the initial removal was necessary. (WIC §§ 300, 319 (c)(g))
- 3) Requires any court order placing a child in foster care, in order to maintain ties between the parent or guardian and any siblings and the child, to provide for visitation between the parent or guardian and the child. Specifies, however, that no visitation shall jeopardize the safety of the child. (WIC § 362.1 (a)(A)(B))
- 4) Provides that at every hearing in which an order is made placing a child under the supervision of the juvenile court and in which the child is not removed from the physical custody of parent or guardian, the court shall terminate the jurisdiction unless the social worker establishes by a preponderance of evidence that continuing jurisdiction and supervision is necessary. (WIC § 364)
- 5) Requires the court to hold a permanency review hearing within 18 months, or, if continued, within 24 months, after the date the child was originally removed from the physical custody of the parent or guardian. After considering the relevant evidence, the court shall order the child returned to the physical custody of the parent or guardian, unless the court finds by a preponderance of the evidence that the return of the child would create a substantial risk to

safety or physical or emotional well-being of the child. Requires the court to review the social worker's report, as specified. (WIC §§ 366.22-366.25)

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 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 use disorder counseling and testing, and sexual abuse counseling.

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.

Supervised Visitation: Supervised visitation is when a parent spends time with their child with a neutral third person – either a professional with special training or a friend or family member - watching and listening during the visit. Among the reasons supervised visitation is ordered are concerns due to safety issues related to domestic violence, child abuse, or child abduction. Sometimes the reasons are due to substance use disorder issues, mental health, or a parent that a child does not have a relationship with.

This bill requires the court at a dependency review hearing, to order unsupervised visitation between a parent or legal guardian and a child, unless one or all of the following occurs:

- Unsupervised visitation is contrary to the child's welfare and there is a substantial danger to the physical health of the child.
- The child is suffering severe emotional damage and the child's physical or emotional health cannot reasonably be protected without supervised visitation.
- There is substantial evidence that the parent or legal guardian may flee the jurisdiction with the child.

Alternatively, if the court does make an order for supervised visitation, they must specify the factual basis for that order and assess the persons proposed by a parent or guardian to supervise the visitation.

While these changes should not impact the decisions being made regarding what type of visitation is being ordered, it does shift the presumption from supervised to unsupervised visitation and require the court to demonstrate why supervised visits are being ordered.

Family Time and Federal Guidance. The Administration for Children and Families (ACF) under the United States Department of Health and Human Services released an information memorandum (IM) on February 5, 2020, to provide information on best practices for providing children and youth in out-of-home care safe while improving parent and child well-being outcomes. The IM describes viewing child and family contacts during foster care less as “visits” and more as “family time” which can occur when the parent and family participate in normal parenting activities such as sharing meals, school events, or medical appointments. Family time can occur in the homes of resource families or in the family’s home. The IM emphasized “the importance of family time and visitation in reducing the trauma of removal and placement of children in out-of-home care, maintaining the integrity of the parent-child relationship, healthy sibling relationships and overall child and family well-being.” The IM also provided a recommendation for judges to, “Order unsupervised family time unless specifically contraindicated by safety threats to the child or based on the specific needs/circumstances of the child.”

Other States: Several states have codified best practices for family time, as identified by ACF. Georgia statute specifies that “there shall be a presumption that visitation shall be unsupervised unless the court finds that unsupervised visitation is not in a child's best interests.

The Wisconsin Department of Children and Families Ongoing Services Standards identifies family interaction while a child is in out-of-home care as critical for “minimizing placement-induced trauma caused by separation” and recognizes that such contact is critical to enhancing attachment.

HB 1194 (Ortiz-Self, et al.), Chapter 208, Laws of 2021, went into effect on July 25, 2021, in Washington State and made significant changes to the court’s role in ordering visitation. Key among these changes is the presumption that the requirement for supervision or monitoring of visits is no longer necessary. HB 1194 stated that parent-child visits must occur in the least restrictive setting and be unsupervised. The following language was added to the permanency plan of care statute: visitation “must occur in the least restrictive setting and be unsupervised unless the presence of threats or danger to the child requires the constant presence of an adult to ensure the safety of the child.”

Illinois statute places visitation in the context of reasonable efforts and permanency planning articulating that, “the frequency, duration, and locations of visitation shall be measured by the needs of the child and family and not by the convenience of the department.”

Author’s Statement: “Current law provides general guidelines for family visits when a child enters the Child Welfare Services system. However, it fails to address when a family visit needs to be supervised, the duration of the visit, and where it should take place. As a result, most child welfare agencies automatically require supervised visits, even when the additional monitoring may be unnecessary. Finding trained monitors is a long and expensive process, which often results in delayed visitations. Many visits are also scheduled in restrictive settings that are not conducive to quality family time. Research shows that regular family visits in safe environments expedite permanency and increase the likelihood of reunification.

“[This bill] remedies these problems by creating a rebuttable presumption that visits between a parent and their child in foster care are unsupervised, unless there is a determination that the child's safety is in danger. In cases where the court determines that supervision is necessary, this bill requires bench officers to set the frequency and duration of visitation. Children who enter the foster system deserve every opportunity to safely bond with their families, with the ultimate goal of family reunification.”

Equity Implications: Data indicate that the majority of families involved with the child welfare system have incomes below the federal poverty line, are overrepresented by certain racial and ethnic groups, and are often single-parent households living in low-income neighborhoods. As a result, these families are already facing enormous barriers to reunify with their children. Research shows that children participating in more frequent and/or regular time with parents exhibit more of the positive outcomes when compared to peers who participate in fewer or less regular visit. The provisions of this bill seek to ensure that children can maintain a relationship with their parents even when they may not be an option as a caregiver.

Policy Considerations: While the intent of this bill aligns largely with federal guidance, it is also proposing a significant policy shift with the creation of a rebuttable presumption in favor of unsupervised visitation. As with any significant policy change impacting foster youth, it is important to balance the desire for reunification with the safety and well-being of the youth. Because these youth have already been removed from their home as a result of either neglect, abuse, or both, their safety and well-being is required to be at the center of the decisions being made on their behalf.

Should this bill move forward, the Author may wish to consider aligning this bill's provisions more closely to the federal guidance so that the safety of the youth is centered and changes to current practice align as closely to the federal recommendations as possible.

Currently, this bill prohibits a court determination that the parent is noncustodial, or that a child does not have an established relationship with the parent from being the sole basis for a finding that unsupervised visitation would be contrary to the child's welfare. The term noncustodial is only applied to matters concerning physical custody and as such, does not preclude an established parent/child relationship. Therefore, it can be appropriate to order unsupervised visitation for noncustodial parents. However, if a parent does not have a relationship with the child and is, for all intents and purposes a stranger, then a court should have the ability to use that information as the sole basis for ordering supervised visitation until a relationship is established.

Should this bill move forward, the author may wish to strike the provision that specifies a parent that does not have an established relationship with their child shall not be the sole basis for a finding that unsupervised visitation would be contrary to the child's welfare.

Proposed Committee Amendments: The Committee proposes amendments to address policy considerations stated above to do the following:

- Strike requirements for there to be a substantial danger to the physical health of the child before supervised visits can be ordered, and instead require the standard for ordering supervised visits be due to an unsupervised visit posing a safety risk to the child based on their specific needs and circumstances.

- Strike provision specifying that a child who does not have an established relationship with the parent or guardian, shall not be the sole basis for a finding that unsupervised visitation would be contrary to the child's welfare.

Double referral: This bill was previously heard in the Assembly Judiciary Committee on April 9, 2024, and was approved on a 9-2 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, clarifies 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.

SB 578 (Ashby), Chapter 618, Statutes of 2023, required a social worker to report on, and a juvenile court to consider, the potential harms that may result from removing a child from their parent, guardian, or Indian custodian's custody; and, if the child is or there is reason to know the child is an Indian child, requires the social worker to report on what efforts have been made to contact the child's tribe.

AB 2159 (Bryan), Chapter 691, Statutes of 2022, prohibited a court from denying reunification services to parents and guardians in custody prior to conviction and sentencing.

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 use disorders.

AB 841 (Cunningham), Chapter 98, Statutes of 2021, prohibited a child from being found to be within the jurisdiction of the juvenile court solely due to the failure of the child's parent or alleged parent to pursue court orders seeking custody of the child.

SB 977 (Liu), Chapter, 219, Statutes of 2014, imposed additional duties on social workers to include in each social study, evaluation, and supplemental report to the courts, a factual discussion of whether a child can be returned to the custody of their parent who is enrolled in a certified substance use disorder treatment facility that allows a dependent child to reside with

their parent. Further required courts to consider whether a child can be returned to the custody of their parent in these situations, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

Dependency Advocacy Center (Co-Sponsor)
Dependency Legal Services (Co-Sponsor)
Los Angeles Dependency Lawyers, INC. (Co-Sponsor)
Bar Association of San Francisco
California Alliance of Child and Family Services
California Public Defenders Association
Children's Law Center of California
Families Inspiring Reentry and Reunification 4 Everyone
National Center for Youth Law
Public Counsel
Seneca Family of Agencies
The Law Offices of Dale Wilson

Opposition

County Welfare Directors Association of California

Analysis Prepared by: Jessica Langtry / HUM. S. / (916) 319-2089