

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Lisa Calderon, Chair

AB 841 (Cunningham) – As Amended March 23, 2021

SUBJECT: Dependant children

SUMMARY: Prohibits 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.

EXISTING LAW:

- 1) Establishes a state and local system of child welfare services, including foster care, for children who have been adjudged by the court to be at risk of abuse and neglect or to have been abused or neglected, as specified. (Welfare and Institutions Code Section [WIC] 202)
- 2) States that the purpose of foster care law is to provide maximum safety and protection for children who are currently being physically, sexually, emotionally abused, neglected, or exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm. (WIC 300.2)
- 3) Declares that a child is within the jurisdiction of the juvenile court if the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. Permits the court to find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history or repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm. (WIC 300(a))
- 4) Declares that a child is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court if they meet certain criteria, including, but not limited to: the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of the child's parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or nonmedical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. (WIC 300(b))
- 5) Prohibits a child from being within the jurisdiction of the juvenile court solely due to the lack of emergency shelter for the family. (WIC 300(b))
- 6) Allows a social worker, when it is determined that a child is within the jurisdiction of the juvenile court, to, in lieu of filing a petition, undertake a program of supervision of the child in order to ameliorate the situation that brings the child within, or creates the probability that the child will be within, the jurisdiction of the juvenile court, as specified. (WIC 301(a))

- 7) Requires a county to file a petition to the court requesting a detention hearing within 48 hours of placing a child under temporary custody to determine whether a child should remain in custody and whether any specific court permissions are necessary to provide for the health and safety of the child. (WIC 313 and 319)
- 8) Requires a "detention hearing" to be held within 24 hours of the next court day whenever a detention petition is filed with the court. (WIC 315)
- 9) Requires a juvenile court to hold a "jurisdictional hearing" within 15 judicial days of the petition filed to take the child into temporary custody to determine whether the court has jurisdiction to adjudicate the child. (WIC 334)
- 10) Requires a juvenile court to hold a "dispositional hearing" within 60 days of the detention hearing to determine the appropriate placement for the youth if he or she is adjudicated to be a dependent of the court. (WIC 352(b))

FISCAL EFFECT: This bill was keyed non-fiscal by the Legislative Counsel.

COMMENTS:

Child welfare services system: The goal of California's Child Welfare Services (CWS) system is ultimately to protect children from abuse and neglect, and provide for their health, safety, and overall well-being. When a child is identified as being at risk of abuse or neglect, county juvenile courts hold legal jurisdiction and the CWS system appoints a social worker to ensure the needs of the child are met. Through the CWS system, multiple opportunities arise for the judicial system to evaluate, review, and determine the custody of the child, or determine the best out-of-home placement for the youth. Together, the judicial system and the child's social worker ensure that the best possible services are provided to the child. The CWS system, when appropriate, also works to place children who have been removed from the custody of their parents or guardians with individuals they consider to be family in order to maintain familial bonds wherever possible. As of October 1, 2020, there were 60,045 youth placed in California's child welfare system.

Dependency court procedure: Children who have been removed from the custody of their parents are temporarily placed within the jurisdiction of the child welfare system pending a decision regarding their health and safety. Within 48 hours of removing a child from their parent(s) custody, a social worker is required to file a petition with the court requesting a detention hearing be conducted in order to determine whether further detention of the child is warranted.

If the social worker petitions to declare the child a dependent of the court, current law requires that the detention hearing be held within 48 hours of the petition being filed. It is at the detention hearing that the social worker is required to outline the allegations of abuse or neglect filed against the parent(s) of the child, as well as the rationale for removing the child from the parent(s). If the court determines that it is in the best interest of the child that they be removed from their parent's or parents' custody, the child is removed and permanent placement of the child is determined at a later date.

Within 15 days of the child being removed from their parent's or parents' custody, a jurisdictional hearing must occur to determine whether the allegations of abuse or neglect are

true and whether the juvenile court holds jurisdiction. If the allegations are found to be true, a dispositional hearing determining where the child will be placed must occur within 60 days. It is at the dispositional hearing that the court determines the parameters of the family reunification plan and makes a determination as to where and with whom the child will reside.

Need for this bill: Current law requires that, in order for a child to come within the jurisdiction of the juvenile court, certain criteria must be met; this criteria includes that the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness as a result of the failure or inability of the child's parent or guardian to adequately supervise or protect the child. Current law also prohibits a child from being found to be within the jurisdiction of the juvenile court solely due to the lack of an emergency shelter for the family, meaning homelessness is not in and of itself abuse or neglect. The provisions of this bill seek to create a similar protection for parents or alleged parents who do not seek court orders seeking custody of a child. Specifically, this bill would prohibit a child from being found to be within the jurisdiction of the juvenile court for the sole reason that their parents or alleged parents did not seek court orders seeking custody of the child.

According to the author, "A parent is not unfit solely because they are not litigious, lacking the money or sophistication or time to seek legal redress of family issues in court actions. Likewise, a parent is not unfit solely because they try to work out issues with another parent informally and collaboratively, without seeking formal court orders. Even so, in rare but not uncommon cases, child welfare agencies will allege that a parent has failed to protect a child under WIC 300 solely on the single ground that the parent did not initiate child-protecting litigation against another parent. Such allegations penalize and seek to rupture families based on either their poverty, lack of legal sophistication, or efforts informally to resolve family issues. Inspired by current law's treatment of lack of emergency shelter, which, too, cannot all by itself be the basis of a Section 300 allegation (WIC section 300(f)(1)(B)), [this bill] narrowly addresses this problem simply by saying that an alleged failure to seek protection for a child by initiating litigation, while permitted as one of the factors in weighing whether a parent has adequately protected a child, cannot all by itself serve as the basis of a WIC section 300 allegation."

Double referral: This bill will be referred to the Assembly Judiciary Committee should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Children's Advocacy Institute (Sponsor)
East Bay Family Defenders
Los Angeles Dependency Lawyers, INC.

Opposition

None on file

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