

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Corey A. Jackson, Chair

AB 954 (Bryan) – As Amended March 22, 2023

**SUBJECT:** Dependency: court-ordered services

**SUMMARY:** Prohibits a parent or guardian's participation in court-ordered child welfare services from being considered to be noncompliant when there is evidence they are unable to pay for a service, or that payment for a service would create an undue financial hardship.

Specifically, **this bill:**

- 1) Requires the court, when making reasonable orders to parents or guardians to participate in court-ordered child welfare services, to inquire whether a parent or guardian can afford the court-ordered services.
- 2) Prohibits, at a review hearing where the court is considering the parent or guardian's participation in reunification or family maintenance, the parent or guardian from being considered to be noncompliant with the court-ordered case plan when there is evidence they are unable to pay for a service, or that payment for a service would create an undue financial hardship for the parent or guardian.
- 3) Specifies, for purposes of these provisions, that a parent or guardian who qualifies for the services of the public defender is to be presumed to be unable to pay the cost of court-ordered services.

**EXISTING LAW:**

- 1) Establishes the juvenile court with jurisdiction over children who are subject to abuse or neglect. (Welfare & Institutions Code Section [WIC] 300 *et seq*)
- 2) States that the purpose of juvenile dependency law is to provide maximum safety and protection for children who are currently being physically, sexually, or 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. Provides that the focus must be 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) Provides that a child may become a dependent of the juvenile court and be removed from their parent or guardian if the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted non-accidentally upon the child by the child's parent or guardian. (WIC 300(a))
- 4) Provides that a child may become a dependent of the juvenile court and be removed from their parent or guardian if 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 medical 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. Provides that, notwithstanding these factors, a child does not become a dependent of the juvenile court solely due to the lack of emergency shelter for the family or the failure of the child's parent or alleged parent to seek court orders for custody of the child. (WIC 300(b))

- 5) Provides for additional conditions that would lead to jurisdiction over a dependent child, including for a child who is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care; and has been sexually abused, or there is a substantial risk that the child will be sexually abused, by the child's parent or guardian or a member of the child's household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse. (WIC 300(c)-(j))
- 6) Requires the court, if at the initial hearing, the juvenile court orders a child removed from their parent due to abuse or neglect, 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))
- 7) Requires a social worker, whenever the social worker has cause to believe that there was or is within the county a person described in WIC 300, to immediately make any investigation they deem necessary to determine whether child welfare services should be offered to the family and whether proceedings in the juvenile court should be commenced. Further, requires the social worker, if they determine that it is appropriate to offer child welfare services to the family, to make a referral to those services. (WIC 328(a))
- 8) 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))
- 9) Authorizes the court, if a child is adjudged a dependent child of the court on the ground that the child is a person described by WIC 300, to make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court. (WIC 362(a))
- 10) Authorizes the court, when it appears to the court that a parent or guardian of the child desires counsel but is presently financially unable to afford and cannot for that reason employ counsel, the court to appoint counsel, as provided. (WIC 317(a))
- 11) Authorizes the court, if a child is adjudged a dependent child of the court on the ground that the child is a person described by WIC 300, to make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court. (WIC 362(a))

- 12) Authorizes the court, at any time after a petition has been filed, to join in the juvenile court proceedings, any agency that the court determines has failed to meet a legal obligation to provide services to a child for whom a petition has been filed under WIC 300, regardless of the status of the adjudication. (WIC 362(b)(1))
- 13) Defines “nonminor dependent” or NMD, to mean, a foster child who is a current dependent or ward of the juvenile court, or who is a nonminor under the transition jurisdiction of the juvenile court, and who satisfies all of the following criteria:
  - a) The youth has turned 18 years old while under an order of foster care placement by the juvenile court, and is not more than 21 years old;
  - b) The youth is in foster care under the placement and care responsibility of the county welfare department, county probation department, Indian tribe, consortium of tribes, or tribal organization that entered into an agreement as described; and,
  - c) The youth has a transitional independent living case plan. (WIC 11400(v))
- 14) Defines “agency” to mean any governmental agency or any private service provider or individual that receives federal, state, or local governmental funding or reimbursement for providing services directly to a child, nonminor, or NMD. (WIC 362(b)(3))
- 15) Provides that the court has no authority to order services unless it has been determined that the child, nonminor, or NMD is eligible for those services. Limits, with respect to mental health assessment, treatment, and case management services, as defined, the court’s determination to whether the agency has complied with these provisions. (WIC 362(b)(2))
- 16) Requires, if a child is adjudged a dependent child of the court, on the ground that the child is a person described by Section 300, and the court orders that a parent or guardian shall retain custody of the child subject to the supervision of the social worker, the parents or guardians to participate in child welfare services or services provided by an appropriate agency designated by the court. (WIC 362(c))
- 17) Permits the juvenile court to direct any reasonable orders to the parents or guardians of the child who is the subject of any proceedings as the court deems necessary and proper. Permits that order to include a direction to participate in a counseling or education program, including, but not limited to, a parent education and parenting program operated by a community college, school district, or other appropriate agency designated by the court. Authorizes a foster parent or relative with whom the child is placed to be directed to participate in such a program in cases in which the court deems participation is appropriate and in the child’s best interest. Requires the program in which a parent or guardian is required to participate to be designed to eliminate those conditions that led to the court’s finding that the child is a person described by WIC 300. (WIC 362(d))
- 18) Authorizes the juvenile court, if a child is adjudged a dependent child of the court, to direct any reasonable orders to the parents or guardians of the child who is the subject of any proceedings to ensure the child’s regular school attendance and to make reasonable efforts to obtain educational services necessary to meet the specific needs of the child. (WIC 362(e))

- 19) Requires every hearing in which an order is made placing a child under the supervision of the juvenile court pursuant to WIC 300, and in which the child is not removed from the physical custody of their parent or guardian, to be continued to a specific future date not to exceed six months after the date of the original dispositional hearing. (WIC 364(a))
- 20) Requires a permanency hearing to be held no later than 12 months after the date the child entered foster care and requires the court, at the permanency hearing, to determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within specified time limits. Requires the court, after considering the relevant and admissible evidence, to order the return of the child to the physical custody of their parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to their parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Requires the social worker to have the burden of establishing that detriment. (WIC 366.21(f))
- 21) Requires the juvenile court, excepting certain specified conditions, if a child is not returned to the parent or guardian at the permanency review hearing, to hold a hearing to determine whether adoption, guardianship, or continued placement in foster care is the most appropriate plan for the child. Requires the court to determine whether reasonable services have been offered or provided to the parent or legal guardian. Sets forth examples of circumstances that would not, in or of themselves, be deemed a failure to provide reasonable services. (WIC 366.22(a))
- 22) Requires a court to establish, by clear and convincing evidence, that reasonable reunification services have been provided to the parent prior to ordering a hearing to terminate parental rights. (WIC 366.22(b)(3)(C))
- 23) Authorizes any parent or other person having an interest in a dependent child or NMD who is a dependent child of the juvenile court or an NMD, or the child or the NMD through a properly appointed guardian to, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court or in which a guardianship was ordered for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. Requires The petition to be verified and, if made by a person other than the child or the NMD, to state the petitioner's relationship to or interest in the child or NMD and shall set forth in concise language any change of circumstance or new evidence that is alleged to require the change of order or termination of jurisdiction. (WIC 388(a))

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

**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. This bill would prohibit the court from deeming a parent noncompliant with the case plan if the reason they did not participate in any court-ordered child welfare services was due to an inability to pay.

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 October 1, 2022, there are 53,371 youth between birth and up to 21 years of age in foster care.

*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. 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.

*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 old, current law allows six months of reunification services; and for children over three years old, 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.

According to research conducted by The Fines and Fees Justice Center (FFJC), the median cost for a year-long batterers' intervention program showed that the median cost per class was \$25 per week, or \$1,300 year. The FFJC study presented data from 83 of the programs in Los Angeles County, including program fees, the presence of sliding scale payment options, and fee waivers, and found that 23% of the programs do not offer a sliding scale options and per class costs range from \$15 to \$150. Some family preservation and reunification services in Los Angeles County offer classes that charge fees set on a sliding scale that ranges from \$30 to \$150 per session for individual counseling, and \$25 to \$60 for group sessions. Research has indicated 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.

**Author's statement:** According to the Author, "Today, families are being separated or kept separated based solely on the parent's inability to pay for court-ordered services—even if the parent is complying with all other aspects of their case plan. This practice punishes poor families, the majority of whom are Black or Brown. Delayed reunification traumatizes children, increases costs of foster care and supervision, and adds further financial and emotional stress on families. This bill will ensure that a parent's inability to pay for court-ordered services is not a barrier to reunifying with their children and will no longer unnecessarily extend the time children remain away from their families."

**Need for this bill:** The provisions of this bill seek to prohibit the court from deeming parents noncompliant with their case plans solely because they could not afford to pay for the court-ordered child welfare services. This bill would not require counties to pay for court-ordered services, but rather would prohibit a court at a review hearing from finding that a parent or guardian was noncompliant simply due to their inability to pay for a class.

The bill also creates a presumption that a parent who qualifies for public defender services is unable to pay for these court-mandated classes. While most counties already pay for court-ordered family maintenance or reunification services, Los Angeles County remains an outlier in

requiring parents to foot the bill. According to the author, the cost burden of these services vary by county to county and that San Diego County uses discretionary funds to pay for all court-ordered services.

By denying continued reunification services or terminating parental rights simply for not completing a class they couldn't afford, parents are being punished for existing in poverty. This bill seeks to reduce barriers to family reunification by giving all parents involved in the child welfare system the same opportunity to complete court-ordered services. While this bill does not provide for a metric to determine a parent's inability to pay for a service, it does ensure that a parent's ability to pay for a service will not be a factor in determining reunification.

**Equity Impact:** According to a March 2023 report published by the Legislative Analyst's Office (LAO) entitled, "*Update on Analysis and Key Questions: Racial and Ethnic Disproportionalities and Disparities in California's Child Welfare System*", the majority of California families involved with the child welfare system are experiencing poverty. The LAO estimates that in 2022-23, 54% of child welfare-involved families in California have earnings of under \$1,000 per month. When the court orders a parent to attend classes to assist in rehabilitation before returning the child to their home, most parents are not be able to pay, in addition to a large number of these parents not having access to reliable transportation. While some of these court-ordered services can be covered through health insurance, for those parents who are uninsured, an additional barrier to reunification has been erected.

The LAO further reports that in California, the populations reflected in foster care are predominantly youth of color, as 21% are Black and 50% are Latino. Further highlighting the disproportionality comprising the foster youth population, the number of Black and Native American youth in foster care is four times larger than the number of the general population of Black and Native American youth in California. The LAO also states that racial disproportionalities and disparities are present within initial allegations and persist at all levels of the system—becoming the most pronounced for youth in care. While the families involved in the child welfare system skew disproportionately toward low-income people of color, this bill would attempt to reduce the devastating effects that poverty has on families who are involved in the child welfare system and trying to reunify their family.

**Double referral:** This bill passed out of the Assembly Judiciary Committee on March 21, 2023, with an 8-0 vote.

#### **RELATED AND PRIOR LEGISLATION:**

**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.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Los Angeles Dependency Lawyers, INC. (Sponsor)

Seneca Family of Agencies

The Alliance for Children's Rights

The Children's Partnership

**Opposition**

None on file

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