

Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Corey A. Jackson, Chair

SB 463 (Wahab) – As Amended March 20, 2023

SENATE VOTE: 37-0

SUBJECT: Dependent children

SUMMARY: Eliminates the juvenile court standard, for purposes of foster youth status review hearings, that considers failure of the parent to participate regularly and make substantive progress in court-ordered treatment programs to be prima facie evidence that return of a foster child would be detrimental.

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 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 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))
- 4) Requires a social worker, whenever the social worker has cause to believe that there was or is abuse or neglect of a child, 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))
- 5) 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))
- 6) Provides that reunification services 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 has been adjudicated a dependent of the court as the result of physical or sexual 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))
- 7) Prevents a court from ordering reunification services for a parent in specified situations, unless the court finds, by clear and convincing evidence, that reunification is in the child's best interest. (WIC 361.5(c))
- 8) Requires, if a child is adjudged a dependent child of the court, and the court orders that a parent shall retain custody of the child subject to the supervision of the social worker, the parents to participate in child welfare services or services provided by an appropriate agency designated by the court. (WIC 362(c))
- 9) Permits the juvenile court to direct any reasonable orders to the parents 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 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 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))
- 10) 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, to be continued to a specific future date not to exceed six months after the date of the original dispositional hearing. (WIC 364(a))
- 11) Establishes requirements for hearings conducted by the juvenile court reviewing the status of a dependent child, including the hearing held six months after the initial dispositional hearing, but no later than 12 months after the date the child entered foster care. Requires the court to consider, among other factors, whether the child can be returned to the custody of their parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with their parent. Prohibits the fact the parent is enrolled in a certified substance abuse treatment facility from being, for that reason alone, prima facie evidence of detriment. Declares that the failure of the parent to participate regularly and make substantive progress in court-ordered treatment programs to be prima facie evidence that return would be detrimental. (WIC 366.21(e)(1))
- 12) Requires the court, at the permanency hearing to be held no later than 12 months after the date the child entered foster care, to determine the permanent plan for the child, which includes 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 to consider the criminal history of the

parent subsequent to the child's removal and to determine by clear and convincing evidence whether reasonable services that were designed to aid the parent to overcome the problems that led to the removal have been provided or offered to the parent. Declares that the failure of the parent to participate regularly and make substantive progress in court-ordered treatment programs to be prima facie evidence that return would be detrimental. (WIC 366.21(f)(1)(B))

- 13) Requires, when a case has been continued, the permanency review hearing to occur within 18 months after the date the child was originally removed from the physical custody of their parent. Further requires the court to order the return of the child to the physical custody of their parent unless the court finds, by a preponderance of the evidence, that the return of the child would create a substantial risk of detriment to the safety, protection, or emotional well-being of the child. The court is required to consider whether the child can be returned to the custody of their parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with their parent. Prohibits the fact the parent is enrolled in a certified substance abuse treatment facility from being, for that reason alone, prima facie evidence of detriment. Declares that the failure of the parent to participate regularly and make substantive progress in court-ordered treatment programs to be prima facie evidence that return would be detrimental. (WIC 366.22(a)(1))
- 14) Provides that if the child is not returned to a parent at the permanency review hearing, the court is required to order a hearing to determine whether adoption, guardianship, or foster care is the best plan for the child. (WIC 366.22(a)(3))
- 15) Allows the court to postpone the permanency review hearing for up to six months when it is in the child's best interests to have additional services provided to any of the following: a parent making significant progress in a substance abuse treatment program; a parent who was either a minor parent or a dependent parent at the time of the initial hearing and is making significant progress in establishing a safe home for the child's return; or a parent who was recently discharged from incarceration, institutionalization, and is making significant progress in establishing a safe home for the child's return. (WIC 366.22(b))

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, the March 20, 2023, version of this bill would result in negligible state costs.

COMMENTS:

Background: *Child Welfare Services (CWS).* California's CWS 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.

If the court orders a child to be placed outside of the home, the parent is typically ordered by the court to receive 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.

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 is required to 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 is required to 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, 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. This bill would eliminate the current standard during dispositional hearings that requires the court to find the failure of the parent to participate regularly and make substantive progress in court-ordered treatment programs prima facie evidence that return would be detrimental.

California's CWS 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 April 1, 2023, there are 51,339 youth between birth and 20 years old in foster care.

Court-Ordered Services and the Reunification Plan. Existing law requires the court, in determining the content of reasonable services, to consider the particular barriers to an incarcerated, institutionalized, detained, or deported parent's access to those court-mandated services and ability to maintain contact with the child, and to document this information in the child's case plan. Every case plan is different and may include requirements for that parent to seek counseling, attend parent education classes, or receive substance use disorder treatment and testing services.

Case plans are updated once every six months. The effective date of the case plan is the date the social worker's supervisor approves and signs it. The social worker meets with the parents at least monthly if not more frequently and discusses the case progress, problems encountered and that status of the parent's cooperation.

In addition to the intent to consider substance use disorder treatment in determining reunification services, successful engagement in treatment is considered throughout the CWS process. Current law includes a process of investigation that examines all circumstances contributing to a youth's well-being to ensure substance use is not the sole factor in bringing a child into the court's custody.

Once ordered, family reunification services are required to be provided or arranged for by county welfare department staff in order to reunite the child separated from their parent because of abuse, neglect, or exploitation. These services are available without regard to income to families whose child has been adjudicated or is in the process of being adjudicated a dependent child of the court. Family reunification services are only required to be provided when a child has been placed in out-of-home care, or is in the care of a previously noncustodial parent under the supervision of the juvenile court. When a minor has been placed in foster care with a nonparent, family reunification services may be provided to one or both parents.

Family reunification services include, but are not limited to: case management; out-of-home placements; transportation, visitation between child, family and siblings; and referrals to court-ordered services (may include counseling, substance use disorder counseling and testing, sexual abuse counseling, parenting training, and anger management).

Social workers are required to assist parents with their court-ordered case plan by making referrals to programs in the community that will alleviate further risk of abuse or neglect of their child. Dependency courts generally try to preserve parental rights, and in cases in which a parent is estranged from a child, they may order reunification services to help repair the parent-child relationship and assist the parent in regaining physical custody of their child. Family reunification services are meant to alleviate the circumstances that led to the removal of their child.

If family reunification services are granted of a child that is under the age of three, the law restricts these services to six months from the date of disposition but no longer than twelve months from the date the child entered foster care, unless the court makes findings of substantive parental progress and substantial probability of a safe return home within the next review period. In limiting these services, existing law recognizes that very young children are especially vulnerable to lack of permanency.

Reunification services are not required to be provided to a parent when the court finds, by clear and convincing evidence, that the parent has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan on at least two prior occasions, even though the programs identified were available and accessible. For purposes of this paragraph, "resisted" means the parent refused to participate meaningfully in a prior court-ordered drug or alcohol treatment program and does not include "passive resistance," as described in a 2020 California appellate court decision (46 Cal.App.5th 932), which determined that relapsing was not the same as resisting treatment. This finding is consistent with other provisions regarding rehabilitation and its importance in repairing family bonds for those in the CWS system.

This bill would remove the standard that failure to participate regularly and make substantive progress in court ordered treatment programs is prima facie evidence that returning a foster youth to their home would be detrimental.

Author's Statement: According to the author, "The purpose of dependency law is to protect children, not to punish or regulate their parents. . . . Moreover, research in child welfare and recent legislative trends suggests that current danger to the child should always be the analysis, not the parent's level of compliance. This is particularly important because many marginalized groups have fear and generational trauma around the child welfare system, making them less likely to be 'compliant' or 'cooperative.' This legal presumption, which traces back to the late 1980s when probation departments not child welfare departments managed the dependency system, puts a thumb on the scale against disadvantaged parents and reinforces racial inequity in the system."

"[This bill] simply proposes to delete this presumption. Doing so enhances judicial discretion to make an appropriate, holistic determination about the current risk posed to the child. Such decisions may continue to properly factor in the parent's lack of compliance."

Need for this bill: The provisions of this bill seek to eliminate the requirement for juvenile courts at status review hearings, which treats a parent's failure to participate regularly and make substantive progress in court-ordered treatment programs as an automatic presumption that reunifying the family would be detrimental to the youth. Because there could be many factors affecting a parent's ability to participate in court-ordered treatment programs, such as an inability to pay, transportation issues, or work conflicts, this bill would allow the court to consider all of the relevant circumstances during a dispositional hearing, rather than being directed to bar reunification based only on one element. Additionally, it is unclear how "substantive progress" is measured and by whom.

By eliminating this standard, the court can consider additional factors beyond participation in court-ordered treatment programs in furtherance the goals of the CWS system that aim to preserve and strengthen families.

Equity Implications: 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 effects has on families who are involved in the child welfare system and trying to reunify their family by allowing the juvenile court to properly consider all factors that determine parental fitness.

Double referral: This bill passed out of the Assembly Judiciary Committee on June 6, 2023, with a 9-2 vote.

RELATED AND PRIOR LEGISLATION:

AB 937 (McKinnor) of the current legislative session, requires, if the juvenile court finds that reasonable family reunification services have not been provided to a parent, the court to extend reunification services for an additional six months, unless the court finds by clear and convincing evidence that extending the time period for reunification services would be detrimental to the child. *AB 937 is currently pending before the Senate Appropriations Committee.*

AB 954 (Bryan) of the current legislative session, 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. *AB 954 is currently pending before on the Senate Floor.*

SB 578 (Ashby) of the current legislative session, requires a juvenile court to make a trauma-informed analysis of the negative consequences that a child likely will experience as a result of removal from their home, prior to ordering removal. *SB 578 is set for hearing in the Assembly Human Services Committee on July 11, 2023.*

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 abuse.

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 abuse 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

County of Santa Clara (Co-Sponsor)
Los Angeles Dependency Lawyers, INC. (Co-Sponsor)
A New Way of Life Re-entry Project
AOUON Orange County
California Lawyers Association - Family Law Section
Children's Law Center of California
Dependency Advocacy Center
Dependency Legal Services
East Bay Family Defenders
Family Reunification Equity & Empowerment (F.R.E.E.)
First 5 Alameda County
LA Dependency Lawyers
Legal Services for Prisoners With Children
National Center for Youth Law
Public Counsel
Starting Over, INC.
Western Center on Law & Poverty

Opposition

None on file

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