

Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Corey A. Jackson, Chair

SB 578 (Ashby) – As Amended April 13, 2023

SENATE VOTE: 40-0

SUBJECT: Juvenile court: dependents: removal

SUMMARY: Requires a social worker to include specified information to the court at the initial petition hearing regarding the short-term and long-term harms to the child that may result from removal from their parent's, guardian's, or Indian custodian's (parent's) physical custody.

Specifically, **this bill:**

- 1) Requires the social worker, at the initial petition hearing to determine whether there is the need for continued detention for a youth who has been removed from their parent's physical custody, to include in their report to the court, information regarding the short-term and long-term harms to the child that may result from their removal, including, but not limited to, the least disruptive alternatives to returning the child to the custody of their parent, other measures that may be taken to alleviate disruption and minimize the harms of removal, and the information specified in 3) below.
- 2) Specifies that if it is known, or there is reason to know, that the child is an Indian child, the report also is required to include the steps taken to consult with the tribe and the outcome of that consultation.
- 3) Requires the court to consider, in determining whether continuance in the parent's home is contrary to the child's welfare, the short-term and long-term harms to the child that may result from the continued removal. Further requires the court in making this determination, to review the social worker's report and any other evidence in considering factors that include, but are not limited to, all of the following:
 - a) The child's attitude toward removal and the existing relationship between the child and their parents;
 - b) The existing relationship between the child and other members of the household, including, but not limited to, siblings; and,
 - c) The disruption to the child's schooling, social relationships, and physical or emotional health that may result from placement out of the home.
- 4) Requires the court, if the court finds that removal is necessary, to, in a written order or on the record, set forth all of the following:
 - a) The basis for its findings and the evidence relied on, including, if applicable, the social worker's report;
 - b) The child's placement and the basis for determining that the placement is the least disruptive alternative for the child; and,

- c) Any other measures to be taken in order to alleviate disruption and minimize the harms of removal for 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) Establishes a system of juvenile dependency for children for specified reasons, and designates that a child who meets certain criteria is within the jurisdiction of the juvenile court and may be adjudged as a dependent child of the court, as specified. (WIC 300 *et seq.*)
- 3) Requires a social worker to immediately investigate the circumstance of the child and the facts surrounding the child being taken into custody and attempt to maintain the child with the child's family through the provision of services, when a child is taken into temporary custody, as provided, and brought to the social worker. (WIC 309(a))
- 4) 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)
- 5) States legislative intent to preserve and strengthen a child's family ties whenever possible and to reunify a foster youth with their biological family whenever possible, or to provide a permanent placement alternative, such as adoption or guardianship. (WIC 16000)
- 6) 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)
- 7) Requires, if a child is removed, the social worker to conduct, within 30 days, an investigation in order to identify and locate all grandparents, parents of a sibling of the child, if the parent has legal custody of the sibling, adult siblings, other adult relatives of the child, including any other adult relatives suggested by the parents, and, if it is known or there is reason to know, the child is an Indian child. (WIC 309(e)(1))
- 8) Requires a social worker to use due diligence in investigating the names and locations of the relatives, as well as any parent and alleged parents, and requires each county welfare department to do both of the following:
 - a) Create and make public a procedure by which a parent and relatives of a child who has been removed from their parents or guardians may identify themselves to the county welfare department and requires the county welfare department to provide parents and relatives with specified notices; and,

- b) Notify the California Department of Social Services (CDSS), on or before January 1, 2024, in an email or other correspondence, whether it has adopted one of the suggested practices for family finding and, generally, whether the practice has been implemented. (WIC 309(e)(3))
- 9) Defines “family finding” to mean conducting an investigation, including, but not limited to, through a computer-based search engine, to identify relatives and kin and to connect a child or youth, who may be disconnected from their parents, with those relatives and kin in an effort to provide family support and possible placement. If it is known or there is reason to know that the child is an Indian child, “family finding” also includes contacting the Indian child’s tribe to identify relatives and kin. (WIC 309(e)(3)(B))
- 10) Requires preferential consideration be given to a request by a relative to have the child placed with the relative if the child has been removed from the physical custody of the child’s parent. (WIC 361.3(a))
- 11) Requires, when placing a child in the home of a relative, an extended family member, or non-relative extended family member (NREFM) on a temporary basis, the court to consider the recommendations of the social worker based on the required assessment, including the results of a criminal records check and prior child abuse allegations, if any, before ordering that the child be placed with a relative or NREFM. (WIC 319(h)(3))
- 12) Requires CDSS to provide technical assistance to encourage and facilitate the county placement agency’s evaluation of placement needs and the development of needed placement resources and programs. (WIC 16001.1)
- 13) Requires the juvenile court to make full consideration of the proximity of a child’s natural parents to the potential foster care placement of that child in order to facilitate visitation and family reunification, and if possible, for the placement to be made in the home of a relative, unless the placement would not be in the best interest of the child. (Family Code Section [FAM] 7950(a))
- 14) Requires placement, if possible, to be made in the home of a relative, unless the placement would not be in the best interest of the child, and requires diligent efforts to be made by an agency or entity to locate an appropriate relative. Requires the court, at any permanency hearing in which the court terminates reunification services, or at any post-permanency hearing for a child not placed for adoption, to find that the agency or entity has made diligent efforts to locate an appropriate relative and that each relative whose name has been submitted as a possible caretaker, either by the relative or by other persons, has been evaluated as an appropriate placement resource. (FAM 7950 (a)(1))
- 15) Requires the court, at the initial petition hearing, to order the release of the child from custody unless a prima facie showing has been made that the child comes within Section 300, the court finds that continuance in the parent’s home is contrary to the child’s welfare, and any of the following circumstances exist:
 - a) 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 removing the child from the parent's or guardian's physical custody;

- b) There is substantial evidence that a parent 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;
 - c) The child has left a placement in which the child was placed by the juvenile court, or,
 - d) The child indicates an unwillingness to return home, if the child has been physically or sexually abused by a person residing in the home. (WIC 319(c))
- 16) Requires the court to also make a determination on the record, referencing the social worker's report or other evidence relied upon, as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from their home, and whether there are available services that would prevent the need for further detention. Services to be considered for purposes of making this determination are case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training, transportation, and any other child welfare services authorized by CDSS. Requires the court to also review whether the social worker has considered whether a referral to public assistance services would have eliminated the need to take temporary custody of the child or would prevent the need for further detention. (WIC 319(f))
- 17) Requires the court, if a court orders a child detained, to state the facts on which the decision is based, specify why the initial removal was necessary, reference the social worker's report or other evidence relied upon to make its determination whether continuance in the home of the parent is contrary to the child's welfare, order temporary placement and care of the child to be vested with the county child welfare department pending the specified hearing or further order of the court, and order services to be provided as soon as possible to reunify the child and their family, if appropriate. (WIC 319(g))
- 18) Establishes, in federal law, the "Indian Child Welfare Act" (ICWA), which provides guidance to states regarding the jurisdictional requirements, proceedings of tribal courts, and custody proceedings involving the removal of Indian children from their parents. (25 United States Code, Ch. 21, Sections 1901 *et seq.*)

FISCAL EFFECT: According to the Senate Appropriations Committee analysis on May 8, 2023:

- CDSS: Staff notes unknown ongoing costs to CDSS, including hundreds of thousands for 2.0 additional Associate Governmental Program Analyst, one for the Family Centered Safety and Support Bureau to provide all-county support and technical assistance, as well as one for the Training Support Unit (General Fund). Additional costs may include CORE training for social workers and ongoing local assistance to counties.
- Local Costs: Unknown costs to counties in order for social workers to provide the detail required by the bill in their initial reports. To the extent the bill increases county costs already borne by a local agency for programs or levels of service mandated by the 2011

Realignment, the bill would apply to local agencies only to the extent that the state provides annual funding for the cost increases.

COMMENTS:

Background: *Child Welfare Services (CWS) and Dependency Court Procedures.* 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.

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 is required to 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 initial petition hearing, the court examines the child's parents, or others who have relevant knowledge and hear the relevant evidence that the child, or the child's parents, or their counsel desires to present. The social worker is required to report to the court on the reasons why the child has been removed from the parent's, physical custody, the need, if any, for continued detention, the available services and the referral methods to those services that could facilitate the return of the child to the custody of the child's parents, and whether there are any relatives who are able and willing to take temporary physical custody of the child.

This bill would require the social worker also to include information in their report to the court regarding any short-term and long-term harms to the child that may result from removal from their parent's physical custody.

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.

The court also 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.

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 in an appropriate placement.

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.

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.

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

Continuum of Care Reform (CCR). Over the last several years California began reforming the CWS system to improve placement and treatment options for youth in foster care, known as the Continuum of Care Reform and most often referred to as CCR. AB 403 (Stone), Chapter 773, Statutes of 2015, was enacted followed by a series of bills (see prior and related legislation below) that helped with the overall implementation. AB 403, sponsored by CDSS, sought to improve outcomes for children and youth served by the CWS system by working to ensure that foster youth have their day-to-day physical, mental, and emotional needs met, that they have the opportunity to grow up in permanent and supportive homes, and have the opportunities necessary to become self-sufficient and successful adults.

CCR also was enacted for the purposes of reducing the use of congregate care as a frequently used placement option for youth, as data have demonstrated that youth placed in congregate care settings experience poorer outcomes than youth placed in family settings. Research has shown that youth who experience group placements have poorer educational outcomes than youth in family foster care, including lower test scores in basic English and math, are less likely to graduate high school, when compared to youth in family foster care, are at risk of physical abuse when they are placed in group settings, and lack opportunities to develop critical life skills and positive relationships.

Family Finding and the Resource Family Approval Process (RFA). As part of the reforms set forth by CCR, CDSS and counties have been directed to invest time and resources into “family finding” which can include NREFMs. Family finding allows children to remain in a home with someone they know and are more comfortable, which as described above, are beneficial to the child. Existing law requires the juvenile court, during the dispositional hearing for a dependent child, to make a finding that the child’s social worker has exercised due diligence in identifying, locating and notifying the child’s relatives.

Once family, including NREFMs, have been identified, the RFA process can begin. RFA is designed to be a unified, family-friendly, and child-centered process that combines elements of foster parent licensing, relative approval, and adoption/guardianship approval processes. The RFA process includes a psychosocial assessment, home environment check, and training for all resource families, including relatives, in order to ensure that caregivers are equipped to best meet the needs of youth in foster care. RFA is also a route to direct permanency for caregivers who wish to adopt or be guardians of youth in care, as the RFA process includes elements required by both the adoption and guardianship processes.

Effective January 1, 2017, all new relative home placements were required to meet RFA standards and counties are encouraged to consider the likelihood that a relative will be able to meet those standards when evaluating that possibility. Existing law also provides for a process to place a child with a relative, either on an emergency basis or based on a compelling reason, prior to full RFA approval.

While the removal of a child from their home can be a traumatic event, placement with known relatives and NREFMs can help to alleviate some of the disruptions that can be caused by placement with a family who is unknown to the child.

Other States. According to the author, eight states and Washington, D.C. require judges to consider the harms to a child when deciding whether removal is necessary. Washington D.C., New York, and Iowa, require courts to assess the harms of removal in deciding whether to separate a child from their family. New Mexico and South Carolina include the harm of removal in their reasonable efforts criteria and Hawaii, Minnesota, Nebraska, and Connecticut have issued policies or guidance that emphasize family preservation.

Currently, there is no statutory requirement for the juvenile courts in California to take into consideration the trauma a child may experience when removed from their home. While consideration of a child’s best interest can be hard to define and is ultimately subjective, this bill allows for more information to be presented to the judge tasked with making this difficult decision.

Author’s Statement: According to the author, “There is no disputing that children suffer harm when they are separated from their parents. The highly traumatic experience of family separation can cause irreparable harm, disrupting a child’s brain architecture and affecting their short- and long-term health. [This bill] is sponsored by the very judges who are charged with this most difficult task. [This bill] seeks to reduce the harm a child must endure by requiring a trauma informed analysis be provided to judges in advance of any removal decision. Judges will make a more informed decision in the best interest of the child when given the requested analysis they need to weigh what the safest and healthiest outcome is given all that is happening in the life of the child before them.

“[This bill] will require the court to consider the trauma a child will experience as a result of removal from parental care and weigh that harm against the potential risk of non-removal. The trauma analysis will include connections not only to family, but also to school and community. Judges will have a better opportunity to mitigate harms by having this additional context at the time of deciding how best to proceed. The judge will also be able to ask that the social worker’s harm reduction, trauma informed report include suggested mitigation solutions to the impact of removal. Eight states and Washington D.C. require the courts to assess the harm of removal, or include the harm of removal and emphasis on family preservation in their reasonable efforts criteria or agency guidance. It is time that California follows their lead and requires our own trauma-informed harm reduction model, in so doing, we can better protect children and their families across our great state.”

Need for this bill: The provisions of this bill seek to require the court to consider the trauma a child could experience as a result of removal from their home due to neglect or abuse, which, depending on the placement, can create disruptions due to a change in schools, reduced contact with parents and siblings, and loss of neighborhood friends and supports. This bill does not affect how the court arrives at their decision to remove a child from their home or to return them to their parent’s custody, but does require the social worker to include an analysis in their report that considers the short-term and long-term harms to the child that may result from their removal, and requires the court to set forth any measures that can be taken to alleviate disruption and minimize the harms of removal for the child.

Equity Implications: The proportions of Black and Native American youth in foster care are around four times larger than the proportions of Black and Native American youth in California overall. The Legislative Analyst’s Office (LAO) cites recent research on cumulative child welfare involvement of California’s 1999 birth cohort that found nearly one in two Black and Native American children experienced some level of child welfare involvement by the time they turned 18 (compared to around 29% of Latino children, 22% of White children, and 13% of Asian/Pacific Islander children). Data also confirm that the Black, Indigenous, and People of Color (BIPOC) population is less likely to receive in-home services meant to address underlying causes and prevent removal. Because of this, BIPOC children appear in court much more often, and are therefore placed into system care at a higher percentage.

The LAO also notes that racial and ethnic disproportionalities and disparities are present within initial allegations and persist at all levels of the system—becoming the most pronounced for youth in care.

Poverty also plays a significant role in exacerbating racial disparities, particularly when it is conflated with neglect, or creates circumstances that may lead to neglect. Research shows that inadequacy of income, more than any other factor, constitutes the reason that children are removed. This is significant in the context of race because Black children are nearly three times more likely to live in poverty than their White counterparts. As such, Black families tend to have more contact with government systems, leaving them particularly vulnerable to additional state intervention and increased visibility to child protection agencies.

The removal of BIPOC children from their communities inflicts an additional, distinct trauma. Removal from one’s family is harrowing enough, and BIPOC children are often removed not just from their family but also their entire community, affecting their sense of identity and cultural belonging. For children belonging to these ethnic groups, ethnicity forms an important part of

their identity and removal from their communities is devastating to their development, sense of self, and cultural identity.

This bill attempts to mitigate some of these underlying factors and structures by requiring the court to consider the particular circumstances and trauma a child could experience as a result of removal from their home. By providing the courts with this information, judges can weigh their decisions from a more informed perspective of the specific circumstances of each child, in an effort to ensure that all foster youth are appropriately placed in safe and loving environments.

Policy Considerations: This bill appropriately requires social workers to provide the court information regarding the short-term and long-term harms to the child that may occur as a result of removal, including the least disruptive alternatives to returning a child to their parent, and other measures that may be taken to alleviate disruption and minimize the harms of removal. In seeking to balance the benefits of removing a child from an unsafe environment with the harm that can come from removal, it is equally important to ensure that these decisions are made through the lens of finding the best possible placement for the child, before prioritizing the need to minimize disruptions. While disruptions to any child's school and friendships should absolutely be a priority and minimized, the consideration of a child's overall well-being, and therefore the best placement option, should be the focal point for making the difficult decision of whether to allow a child to remain in a home where there has been neglect or abuse. The Committee suggests re-framing this provision to clarify that the priority is to find the best placement for a child.

Additionally, this bill requires the court to consider, in determining whether staying in the parent's home is contrary to the child's welfare, to review the social worker's report and any other evidence, including the child's attitude toward removal. Because the characterization of one's attitude is highly subjective, the Committee suggests striking this word in favor of one that would allow the social worker to more accurately include fact-based information in their report.

While this bill does not explicitly change the standard for how a court decides whether to remove or return a child, the lack of specificity in the inclusion of this trauma-informed analysis could tip the scales in favor of the court being less inclined to remove a child from their home, regardless of any harm that may exist if they stay. While the addition of more information should not lead the court to favor one decision over another, and each analysis will be unique to circumstances of each child, the Committee suggests clarifying that removal determinations will continue to be based on the facts of each specific individual.

This bill also requires the court to consider various factors in making the determination to remove a child from their home, including the disruption to the child's schooling, social relationships, and physical or emotional health that may result from placement out of the home. In recognition of tribal sovereignty, the Committee suggests including language to clarify that a child's connection to their tribal community should also be considered.

Proposed Committee Amendments:

In order to address the above policy considerations, the Committee proposes the author take the following amendments:

On page 3, on line 24, after "the" insert "best placement option, including an assessment of "

On page 5, on line 8, strike “attitude towards” and insert “perspective on” and after “and” insert “a description of”

On page 5, on line 15, after “home” strike “.” and insert “, and in the case of an Indian child, the child’s connection to their tribal community.”

On page 5, on line 26, after “the placement” insert “most appropriate placement, and, if there were less-disruptive alternatives, why those alternatives were not selected”

On page 6, on line 29, after “further detention.” insert “This determination shall apply to each child individually, and considerations shall be tailored to the individual child.”

Double referral: This bill passed out of the Assembly Judiciary Committee on June 20, 2023, with a 10-0 vote.

RELATED AND PRIOR LEGISLATION:

SB 824 (Ashby) of the current legislative session, expands the authority of CDSS to grant criminal record exemptions during the RFA process to include NREFMs. Allows youth who were subject to an order for placement with a relative, regardless of the status of any criminal record exemption or RFA, to be eligible to receive aid in the form of state-funded Kinship Guardianship Assistance Payment Program. Adds the home of a NREFM to the placements that would allow a youth to be eligible for Aid to Families with Dependent Children-Foster Care (AFDC-FC), and expands eligibility for the Adoption Assistance Program. *SB 824 is set to be heard by the Assembly Appropriations Committee on July 12, 2023.*

SB 463 (Wahab) of the current legislative session, eliminates the evidentiary presumption in juvenile court that a parent’s lack of participation or progress in a treatment program endangers the child, for purposes of determining whether the child should be returned to the parent’s custody. *SB 463 is set to be heard by the Assembly Human Services Committee on July 11, 2023.*

SB 1021 (Durazo) of 2020, would have, in the event a juvenile court ordered a child detained, prohibited the court from restricting visitation between a parent and child any more than necessary to ensure the child’s safety and well-being and would have specified facts that do not constitute a basis for requiring supervised visits; and would have, where a court orders a child into foster care, required the court to consider specified factors in making a visitation plan. *SB 1021 was held in the Senate Judiciary Committee as a result of COVID-19-related bill limits.*

AB 3176 (Waldron), Chapter 833, Statutes of 2018, revised a range of dependency-related statutes to reflect changes to ICWA, including the statute setting forth the procedures and requirements for the initial hearing on a dependency petition.

AB 403 (Stone), Chapter 773, Statutes of 2015, AB 1997 (Stone), Chapter 612, Statutes of 2016, AB 404 (Stone), Chapter 732, Statutes of 2017, AB 1930 (Stone), Chapter 910, Statutes of 2018, AB 819 (Stone), Chapter 777, Statutes of 2019, and AB 2944 (Stone), Chapter 104, Statutes of 2020, implemented CCR to better serve children and youth in California’s CWS system.

REGISTERED SUPPORT / OPPOSITION:

Support

California Judges Association (Co-Sponsor)
Juvenile Court Judges of California (Co-Sponsor)
A New Way of Life Re-Entry Project
ACLU California Action
California Catholic Conference
California Lawyers Association, Family Law Section
Children's Bureau of Southern California
County of Santa Clara
East Bay Family Defenders
Los Angeles Dependency Lawyers, INC.
National Center for Youth Law
National Center to Advance Peace and Equity for Children, Youth, and Families
Public Counsel
Sayra & Neil Meyerhoff Center for Families, Children & the Courts
Upend Movement
Western Center on Law & Poverty
Young Women's Freedom Center

Opposition

None on file

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