

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2019-2020 Regular Session

AB 2805 (Eggman)
Version: February 20, 2020
Hearing Date: July 30, 2020
Fiscal: No
Urgency: No
JT

SUBJECT

Juveniles: reunification

DIGEST

This bill expands the scope of evidence that a court may consider when determining whether to order reunification services for a young child who has been made a dependent of the juvenile court because the child suffered severe physical abuse by a parent or by any person known by the parent.

EXECUTIVE SUMMARY

When a child is brought into the foster care system, a dependency court is required to order the provision of service to attempt to reunify the child with their family. However, if the child was brought into the foster care system because of certain types of severe harm at the hands of the parent, there is a rebuttable presumption against reunification. In determining if the presumption has been rebutted, courts generally may consider any competent evidence. But in the case of severe physical abuse against a child under the age of five, existing law allows a court to consider testimony only.

This bill would change that provision so the court could consider any competent evidence, thereby aligning that presumption against reunification with other similar provisions and giving courts the ability to make a more holistic and accurate determination. The bill is sponsored by the California Judges Association and supported by the California Chapter of the National Association of Social Workers. The bill has no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that a child may become a dependent of the juvenile court and be removed from their parents or guardian on the basis of abuse or neglect. (Welf. & Inst. Code § 300.)¹
- 2) Requires, at the initial hearing on the petition for dependency, that the social worker report to the court reasons why the child has been removed from the family's physical custody, the need, if any, for continued detention, the available services and referral methods to those services that could facilitate the return of the child to the custody of the their family, and whether there are any relatives who are able and willing to take temporary physical custody of the child. (§ 319(b).)
- 3) Requires the court, if it orders the child to be detained, to state the facts on which the decision is based, specify why the removal was necessary, reference evidence relied on in making the determination whether continuance in the home of the parent or legal guardian is contrary to child's welfare, order temporary placement and care of the child welfare department, and order services to be provided as soon as possible to reunify the child and their family, if appropriate. (§ 319(g).)
- 4) Enumerates certain circumstances in which reunification need not be ordered unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child. (§ 361.5(b),(c)(2).)
- 5) Additionally, prohibits the court from ordering reunification services if the child was brought into the juvenile welfare system due to the parent's (or someone known to the parent) severe physical abuse against the child when the child was under five years of age. Provides that this presumption may be rebutted if the court finds that those services are likely to prevent further abuse or continued neglect of the child, or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. Provides that such a finding may be based on competent testimony only. (§ 361.5(c)(3).)

This bill instead provides that a finding under 5), above, may be based on any competent evidence.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

COMMENTS

1. The juvenile welfare system

The child welfare system is intended to achieve a delicate balance of values, including “protecting children from harm, preserving family ties, and avoiding unnecessary intrusion into family life.” (*In re R.T.* (2017) 3 Cal.5th 622, 638) The overarching goal of dependency proceedings is to safeguard the welfare of California’s children. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 673.) There are approximately 60,000 children in California’s foster care system.

Juvenile court proceedings commence when a social worker files a petition under sections 311 and 332. The purpose of the petition is to protect the child from some parental deficiency, not to punish the parent. (*See In re Alysha S.* (1996) 51 Cal.App.4th 393, 397; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) If the child needs immediate care or is in immediate danger, the child may be removed from a parent’s physical custody and may be placed in the temporary custody of the social worker, a responsible relative, or guardian. (§§ 305, 306.) If the social worker determines that the child should be detained in custody, the social worker is required to file a petition with the juvenile court. (§ 290.1.) Within two court days, the court must hold a detention hearing to determine whether the child should be further detained. (§ 315.) The petition must establish a prima facie case that the child is a victim of abuse or neglect under specified conditions described in section 300, that continuance in the parent’s or guardian’s home is contrary to the child’s welfare, and that further harm will come to the child or the child does not want to return to the home due to abuse. (§ 319(c).)

If the court orders a child detained, the court must state the facts on which the decision is based, specify why the initial removal was necessary, reference specified evidence, and order that temporary placement and care of the child be vested with the county welfare department pending the subsequent hearing known as the “jurisdictional” hearing under section 355, which must be held within 15 court days. (§ 319(g); 334.) If appropriate, the court must order services to be provided as soon as possible to reunify the child and their family. (*Id.*)

Within 15 court days of a detention hearing or 30 calendar days of an initial petition hearing, the dependency court holds a “jurisdictional” hearing on the petition to determine whether the child is a victim of abuse or neglect under section 300. (§ 355.) Under section 300, the court has jurisdiction to adjudge the child a dependent if a preponderance of the evidence shows that the child has suffered or is at a substantial risk of suffering serious harm.

After sustaining the petition’s allegations and establishing jurisdiction over the child, the court holds a “dispositional” hearing to decide where the child will live. (§ 361(a).) A dependent child may not be taken from the physical custody of a parent, guardian, or

custodian unless the juvenile court finds clear and convincing evidence that at least one of several specified conditions showing that the child is endangered applies. (*Id.* at (c).)

If the court decides the child should not be with the parents, family reunification services are provided and a review hearing is held at least every six months. (§§ 361.5(a); 366.21(e), (f).) At a review hearing, the court must return the child to their parents unless the court finds by a preponderance of evidence that the child would be in substantial risk of danger. (§ 366.21(e)(1).) The court must also make findings, based on clear and convincing evidence, that reasonable reunification services have been offered or provided to the parents. (§§ 362.21(g)(1)(C)(ii), 366.22(b)(3)(C); *In re Monica C.* (1995) 31 Cal.App.4th 296, 306.)

2. Authorizes any competent evidence to be considered for a particular finding

In deciding whether to order reunification services, a court must hold a dispositional hearing. (§ 361.5(c)(1).) The social worker must prepare a report that discusses whether such services should be provided. (*Id.*) In specified cases involving serious harm to the child, the court may not order reunification services, unless it finds by clear and convincing evidence that reunification is in the best interest of the child. (*Id.* at (c)(2).) One such case is when the child came into the jurisdiction of the juvenile court under section 300(e), which applies to children under the age of five who suffered severe physical abuse from the parent or a person known by the parent when the parent knew or reasonably should have known the person was physically abusing the child. In such circumstances, the court may not order reunification services unless it finds that those services are likely to prevent re-abuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. (§ 361.5(c)(3).) Such a finding must be based on competent *testimony*, which would typically come from the social worker or parent.

This bill would instead permit the finding to be based on any competent *evidence*, thereby broadening the scope of evidence that may be used in considering whether to order reunification services. This enables courts to consider this issue more holistically by admitting additional evidence, such as police reports or medical files. According to the California Chapter of the National Association of Social Workers, which supports the bill, “[t]he allowance of more evidence will provide for better consideration of the child’s best interest.”

The author writes:

While there are many types of evidence, current law only allows a Judge to consider one type – testimony – when considering if a WIC section 300(e) cases. Considering if a severely abused child under the age of five should be reunified with their parents or guardians is a monumental decision. Judges should be able to consider all types of evidence when making such an important decision. This

bill will expand the information a Judge can consider when deciding if bypassing guardians for reunification services is in the best interest of the child.

The bill's sponsor, California Judges Association, adds:

Dependency Court Judges must make difficult decisions that affect the lives of children and their families. AB 2805 will provide judges with more information to make better decisions, while also avoiding unnecessary hearings that delay services to families and permanency for children. The COVID-19 pandemic was particularly disruptive to the dependency system. Nearly all dependency hearings in every county were postponed, creating a massive backlog to an already overburdened system. Many have also been concerned that shelter-in-place restrictions might contribute to an increase in abuse and neglect of children. This bill is a needed change that will improve judicial decision-making and efficiency, especially under the additional systemic pressures caused by the public health crisis.

SUPPORT

California Judges Association (sponsor)
National Association of Social Workers, California Chapter

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 1021 (Durazo, 2020) aimed to strengthen the reunification process by promoting meaningful visitation and guiding the courts in crafting visitation orders. The bill was referred to this Committee but was not heard.

SB 1126 (Jones, 2020), which relates to juvenile court records, contained a provision identical to the one in this bill, but the provision was amended out. The bill is pending in the Assembly Public Safety Committee.

Prior Legislation: None known.

PRIOR VOTES:

Assembly Floor (Ayes 75, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)
