

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON JUDICIARY
Brian Maienschein, Chair
AB 937 (McKinnor) – As Introduced February 14, 2023

As Proposed to be Amended

SUBJECT: DEPENDENCY: FAMILY REUNIFICATION SERVICES

KEY ISSUE: SHOULD A JUVENILE COURT BE REQUIRED, EXCEPT IN SPECIFIED VERY LIMITED CIRCUMSTANCES, TO ORDER THAT SIX ADDITIONAL MONTHS OF REUNIFICATION SERVICES BE PROVIDED TO A PARENT OR GUARDIAN IN ORDER TO REUNIFY WITH THEIR CHILD, IF THE COURT FINDS AT A PERMANENCY REVIEW HEARING THAT REASONABLE REUNIFICATION SERVICES WERE NOT PROVIDED TO THE PARENT OR GUARDIAN?

SYNOPSIS

California's child welfare system is responsible for ensuring the protection and safety of children at risk of abuse, neglect, or abandonment. When it is necessary for the state to remove a child from his or her parents, the primary objective of the child welfare system is to safely reunify the child with his or her family. To support that objective, in most cases the juvenile court orders reunification services, such as counseling, parenting classes, and drug or alcohol treatment for the child's parents. If the child is under the age of three, these reunification services are offered for a period of six months. If the child is over the age of three, the services are offered for twelve months. In some circumstances, the time period for reunification services can be extended to 24 months.

Although the Legislature has made it very clear that courts must make regular findings about whether reunification services have been offered to the parent or guardian, the statutes are not as clear about the consequences of a court finding that reasonable services have not been provided to the family. For example, Section 366.26 (c)(2) states that the court "shall not terminate parental rights if . . . [a]t each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided," it does not require the court to order additional services or that services be provided beyond 18 months. Appellate courts are split about whether the lack of adequate reunification services provided within the first 18 months of the child's removal necessitates, or even justifies, an extension of the time period for reunification services. This bill attempts to address some of these ambiguities by, among other things, requiring six additional months of reunification services to be provided to a parent, even when that would extend the period of services to 24 months. The bill in print offers no exception to this requirement. As proposed to be amended, the bill would provide an exception to the mandate when the court finds by clear and convincing evidence that extending the time period would be detrimental to the child (based on competent evidence from a mental health professional). The proposed amendments are included in the SUMMARY, below, and explained in the analysis.

The bill is co-sponsored by the Children's Advocacy Institute, Dependency Legal Services, and Root & Rebound and supported by numerous groups representing children and families and

advocating for racial justice. It has no opposition on file. Should it be approved by this Committee, it would be referred to the Assembly Human Services Committee

SUMMARY: Requires a juvenile court to order, except in specified very limited circumstances, that six additional months of reunification services be provided to a parent or guardian, in order to reunify with their child, when the court finds at a permanency review hearing that reasonable reunification services have not been provided to the parent or guardian. Specifically, **this bill:**

- 1) Requires a court to consider, when considering whether to extend court-ordered services up to a maximum of 18 months after the date the child was originally removed from physical custody of the child's parent or guardian, that reasonable services have not been provided to the parent or guardian.
- 2) Allows a court to extend court-ordered services up to a maximum time period not to exceed 24 months if it finds that reasonable services have not been provided to the parent or guardian; and requires the court to specify the factual basis for its conclusion that reasonable services have not been provided to the parent or guardian.
- 3) Requires, if the court extends the time period for reunification at a permanency review hearing, the court to specify the factual basis for its conclusion that either there is a substantial probability that the child will be returned to the physical custody of the child's parent or guardian within the extended time period, or that reasonable services have not been provided to the parent or guardian.
- 4) Requires the court, subject to 5), below, if the child is not returned to a parent or legal guardian at the permanency review hearing and the court finds that reasonable services have not been provided to the parent or guardian, to extend reunification services for an additional six months.
- 5) Provides that notwithstanding 4), above, if the court finds by clear and convincing evidence based on competent evidence from a mental health professional that extending the time period would be detrimental to the child, the court is not required to extend reunification services for an additional six months.
 - a) Requires the court to state, either on the record or in writing, the reasons for its finding.
 - b) Clarifies that neither the passage of time, nor the child's relationship with the caregiver, shall be grounds in and of themselves for the denial of further reunification services.

EXISTING LAW:

- 1) Establishes the juvenile court with jurisdiction over children who are subject to abuse or neglect. (Welfare & Institutions Code Section 300. Unless stated otherwise, all further statutory references are to the Welfare & Institutions Code.)
- 2) Establishes 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. (Section 300.2.)

- 3) Requires that if, at the initial hearing, the juvenile court orders a child removed from their parent or guardian due to abuse or neglect, the court 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. (Section 319 (e).)
- 4) 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. (Section 361.5 (a).)
- 5) Provides that reunification services under 4) above, 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 as the result of several 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. (Section 361.5 (b).)
- 6) Prevents a court from ordering reunification services for a parent in specified situations, including the situations set forth in 5) above, unless the court finds, by clear and convincing evidence, that reunification is in the child's best interest. (Section 361.5 (c)(2) - (4).)
- 7) Requires the court, if a parent or guardian is incarcerated, institutionalized, or detained by the United States Department of Homeland Security, or has been deported to the parent's or guardian's country of origin, to order reasonable reunification services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child.
 - a) In determining detriment, requires the court to consider the age of the child, the degree of parent-child bonding, the length of the sentence, the length and nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, the likelihood of the parent's discharge from incarceration, institutionalization, or detention within the reunification time limitations described in 4) above, and any other appropriate factors.
 - b) 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. Provides that the reunification services are subject to the applicable time limitations imposed in 4), above. (Section 361.5 (e).)

- 8) Requires that a permanency planning hearing "shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent." (Section 366.22 (a)(1).)
- 9) Provides that if the "child is not returned to a parent or legal guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26" to determine whether adoption, guardianship, or foster care is the best plan for the child. (Section 366.22 (a)(3).)
 - a) 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: (1) a parent or guardian making significant progress in a substance abuse treatment program; (2) 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 (3) a parent who was recently discharged from incarceration, institutionalization, or the custody of the United States Department of Homeland Security and is making significant progress in establishing a safe home for the child's return. (Section 366.22 (b).)
 - b) Specifies that for one of these exceptions to apply, the juvenile court must also find that there is a substantial probability the child will be returned to the parent's custody within the extended time period or that reasonable services have not been provided. (*Ibid.*)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: This bill, co-sponsored by Children's Law Center of California; Dependency Legal Services; and Root & Rebound, clarifies the law about what a juvenile court can and must do when it determines, at a permanency planning hearing, that it is not appropriate for a child to be returned to the custody of the parent or guardian, but adequate reunification services have not been provided to the parent or guardian in order to achieve the goal of reunifying with their child. In such circumstances, under the bill, a court would be required to order, except in specified very limited circumstances, that six additional months of reunification services must be provided to the parent or guardian. According to the author:

AB 937 will ensure that parents are given a fair opportunity to reunify with their children by providing the parent with an additional six months of reunification services if courts have ruled that the social worker has failed to provide families with sufficient services during the last review period. California must meet its obligation to its families, and this proposal would ensure that families receive the support needed to stabilize and reunify.

Overview of child welfare services and juvenile dependency court: Children who are at risk of abuse, neglect, or abandonment may be deemed dependents of the juvenile court and provided services, supports and interventions aimed at protecting them and their health and safety. The system aims to preserve and strengthen families by maintaining or reuniting children with their parents whenever appropriate. The dependency process begins when child abuse, neglect, or

abandonment is reported to the local child welfare agency. A social worker with the child welfare agency investigates the allegation to determine if the child requires protection in order to ensure their safety. If so, the child welfare agency files a petition with the juvenile court to make the child a dependent of the court. If necessary, the social worker will remove the child from their home and take the child into protective custody.

At the subsequent court hearing, the court may elect to keep the child in, or return the child to, their home or remove the child from the home. Removal may either result in eventual reunification with the family, or the court may determine that an alternate permanent placement—including the options of guardianship or adoption—is more fitting. When reunification is not possible or appropriate, children are placed in the setting deemed least restrictive and most suitable; the court must give preference to potential placements with relatives or nonrelative extended family members. Throughout this system, there are multiple court hearings—including the detention hearing, the jurisdictional hearing and the dispositional hearing, followed by ongoing review hearings and the permanency hearing—where the custody of a child or their placement is evaluated, reviewed, and determined by the court, in consultation with the child's social worker appointed by the county and the child's attorney, to help provide the best possible support and services to the child.

As of October 1, 2022, more than 74,500 children were receiving services from county child welfare agencies in California. As of that date (the most recent available), 11,512 children were placed in foster homes. (California Child Welfare Indicators Project, *Pont in Time/In Care*, available at <https://ccwip.berkeley.edu/childwelfare/index/r>.)

Reunification services. When it is necessary for the state to remove a child from his or her parents, the primary objective of the child welfare system is to safely reunify the child with their family. To support that objective, in most cases the juvenile court orders reunification services, such as counseling for the family and parenting classes and drug or alcohol treatment for the child's parents. If the child is under the age of three, these reunification services are only offered for a period of six months. If the child is over the age of three, the services are offered for twelve months. In some circumstances, the time period for reunification services can be extended up to 24 months.

During the dependency proceedings, a court must hold periodical review hearings at least every six months, including at six and 12 months after the dispositional hearing. (Section 366.21(e)(1).) At each hearing, except for the permanency and permanency review hearings, the court must find by clear and convincing evidence that the parent was adequately provided reunification services. At a permanency hearing, a judge must find, also by clear and convincing evidence, that reunification services were provided. (Section 366.26.)

Assuming that reunification services are provided (as required for most parents), these review hearings allow the court to make sure that the family is receiving the services that the court has ordered and to see how they are progressing with the services, all with the hope that the family can be reunited. These services provide parents an opportunity to remedy the factors that prompted their child's removal in the first place and provide them every opportunity possible to successfully reunite with their child. At any point during these hearings, a court may initiate, terminate, or continue those services. (Section 366.21 (e)(8).) Thus, parents' access to reunification services is pivotal to the goal of dependency courts in maintaining family unity.

Court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of the child's parent or guardian. (Section 361.5 (a)(3)(A).) But the extension may only occur if and when it can be shown, at the permanency planning hearing that (1) there is a substantial probability that the child will be returned to the physical custody of the child's parent or guardian within the extended time period, or (2) that reasonable services have not been provided to the parent or guardian. (*Ibid.*) Furthermore, under existing law, in determining whether court-ordered services may be extended, the court must consider the special circumstances of some parents: an incarcerated or institutionalized parent or parents; parent or parents court-ordered to a residential substance abuse treatment program; or a parent who has been arrested and issued an immigration hold, detained by the United States Department of Homeland Security, or deported to the parent's country of origin and been unable to maintain contact with their child. (*Ibid.*) The court is required to consider, among other factors, good faith efforts that the parent or guardian has made to maintain contact with the child. (*Ibid.*) If the court does extend the time period, the court must specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of the child's parent or guardian within the extended time period. (*Ibid.*)

Although this language gives the court the authority to order additional services when it finds that past efforts by the welfare department have been inadequate, there is no requirement that the court do so.

Finally, a permanency planning hearing "shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent." (Section 366.22 (a)(1).) If the "child is not returned to a parent or legal guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26" to determine whether adoption, guardianship, or foster care is the best plan for the child. (Section 366.22 (a)(3).) In 2009, the Legislature amended section 366.22 to specify three circumstances in which the juvenile court may postpone the permanency review hearing for up to six months. (Section 366.22 (b).) The hearing may be postponed when it is in the child's best interests to have additional services provided to (1) a parent or guardian making significant progress in a substance abuse treatment program; (2) 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 (3) a parent who was recently discharged from incarceration, institutionalization, or the custody of the United States Department of Homeland Security and is making significant progress in establishing a safe home for the child's return. (*Ibid.*) For one of these exceptions to apply, the juvenile court must also find that there is a substantial probability the child will be returned to the parent's custody within the extended time period or that reasonable services have not been provided. (*Ibid.*)

Lack of clarity in the law about the consequences for a court finding that adequate reunification services were not provided to a family. Although the Legislature has made it very clear that courts must make regular findings about whether reunification services have been offered to the parent or guardian, the statutes are not as clear about the consequences of a court finding that reasonable services have *not* been provided to the family. For example, Section 366.26 (c)(2) states that the court "shall not terminate parental rights if . . . [a]t each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided," it

does not require the court to order *additional* services or that services be provided beyond 18 months.

Appellate courts are split about whether the lack of adequate reunification services provided within the first 18 months of the child's removal necessitates, or even justifies, an extension of the time period for reunification services. Some appellate courts have ruled that a juvenile court must observe the 18-month deadline for setting a Section 366.26 placement hearing whether or not reasonable reunification services had been provided. (See *San Joaquin Human Services Agency v. Superior Court* (2014) 227 Cal.App.4th 215, 224 [juvenile court could not “make the necessary findings to extend services beyond 18 months, regardless of whether or not reasonable services were provided” because “the statutorily required factors were not present”].) But other appellate courts have held to the contrary. (See *In re J.E.* (2016) 3 Cal.App.5th 557, 563–566; *Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1424 [“At the 18-month review hearing, the court may continue the hearing under section 352 if it finds that reasonable family reunification services have not been offered or provided to the parents.”]; *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, [“[T]he Legislature never intended a strict enforcement of the 18-month limit to override all other concerns including preservation of the family when appropriate.”]; *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1795–1796.) Most recently, in *Michael G. v. Superior Court* (2021) 69 Cal.App.5th 1133, California's Fourth Appellate District concluded that the Orange County juvenile court properly terminated reunification services and set the section 366.26 hearing at the 18-month review hearing, notwithstanding its conclusion that reasonable services were not provided in the most recent review period. (*Michael G. v. Superior Court* (2021) 69 Cal.App.5th 1133, 1144.) *Michael G.* is under review by the California Supreme Court. (*Michael G. v. Superior Court* (Dec. 29, 2022, No. S271809) ___ Cal.5th___.)

That split is not surprising. In a statement supporting the California Supreme Court's denial of review of *J.C. v. Superior Court*, *supra*, Justice Goodwin Liu noted the “statutory scheme is ambiguous” and ripe for review by the Legislature. (*J.C. v. Superior Court* (June 28, 2017, G054816) [nonpub. opn.], review den. Aug. 23, 2017, S243357 (stmt. of Liu, J.)) In the statement, Justice Liu points out that this area of the law “implicates a delicate balance of “competing values”—“protecting children from harm, preserving family ties, and avoiding unnecessary intrusion into family life”—that seems best resolved by the Legislature.” (*J.C. v. Superior Court*, *supra*, at p. 22.) He also points out that the following inconsistencies in the relevant code sections:

As noted, section 366.22 requires the court to order a hearing on adoption, guardianship, or foster care if the child has not been returned to a parent or guardian after 18 months. But other provisions suggest that the placement process may not move forward unless the court finds that reasonable reunification services have been provided:

—Section 366.22, subdivision (a)(3) requires the juvenile court to “determine whether reasonable services have been offered or provided to the parent or legal guardian” at the permanency hearing, although it does not expressly condition a placement hearing on a finding of reasonableness.

—Section 366.21, subdivision (g)(1)(C)(ii) and section 366.22, subdivision (b)(3) both state that the “court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.” But this prohibitory language resides in a subdivision of each

statute, and it is not clear whether the prohibition applies in all situations or only in the situations addressed by those subdivisions. For example, section 366.22, subdivision (b) creates an exception to the deadline for scheduling a permanency review for parents who were recently discharged from incarceration, who are minors or dependents, or who are making progress in a substance abuse program. The prohibitory language in section 366.22, subdivision (b)(3) could be read to apply only to parents who fall into these specific categories, although it is unclear why the Legislature would have chosen to provide such protection only to this subset of parents and guardians.

—Section 352, subdivision (a) authorizes juvenile courts to “continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor.” This provision could be read to authorize trial courts to continue a section 366.26 placement hearing after 18 months in the event that reasonable reunification services have not been provided. . . .

In sum, there appears to be a substantial tension in the statutory scheme. On one hand, there are provisions stating that reunification services must cease after 18 months and that a section 366.26 placement hearing must be ordered no later than 18 months after the child has been removed from parental custody. On the other hand, there are provisions requiring or strongly implying that reasonable reunification services must be provided before a section 366.26 placement hearing is ordered.

Finally, Justice Liu urges the Legislature to resolve these ambiguities:

The statutory scheme is ambiguous, and the balance to be struck is fundamentally a policy decision. How should a juvenile court proceed when 18 months have elapsed since the child has been removed from parental custody but reasonable reunification services have not been provided? The answer to this question would benefit from careful examination of the adequacy of reunification services throughout California's diverse counties and the likelihood of achieving reunification within particular time frames. The Legislature seems the best forum for studying and resolving these issues in the first instance.

This bill resolves some questions about the current statutory scheme, requiring a court to order an additional six months of reunification services when it finds that past reunification services have been inadequate and allowing up to 24 months for reunification in such cases.

As pointed out by Justice Liu, the statutory scheme relating to the juvenile dependency system and efforts to reunify foster children with their parents is mindful of the need for parents to receive adequate reunification services. Courts are repeatedly required to consider whether adequate services have been provided to parents. But existing law is less clear about what a court can (or must) do when they find that court-ordered services have been inadequate.

The bill seeks to resolve some of these ambiguities.

- Requiring a court to consider, when considering whether to extend court-ordered services up to a maximum of 18 months after the date the child was originally removed from physical custody of the child's parent or guardian, that reasonable services have not been provided to the parent or guardian.

- Allowing a court to extend court-ordered services up to a maximum time period not to exceed 24 months if it finds that reasonable services have not been provided to the parent or guardian; and requiring the court to specify the factual basis for its conclusion that reasonable services have not been provided to the parent or guardian.
- Requiring the court, if it extends the time period for reunification at a permanency review hearing, to specify the factual basis for its conclusion that either there is a substantial probability that the child will be returned to the physical custody of the child's parent or guardian within the extended time period, or that reasonable services have not been provided to the parent or guardian.
- Requiring the court, if the child is not returned to a parent or legal guardian at the permanency review hearing and the court finds that reasonable services have not been provided to the parent or guardian, to extend reunification services for an additional six months.

Author's amendments. The bill in print *requires* the court, if the child is not returned to a parent or legal guardian at the permanency review hearing and the court finds that reasonable services have not been provided to the parent or guardian, to extend reunification services for an additional six months, regardless of the circumstances of the parent and the child. Given that there could be rare circumstances where either the parent were not available or able to participate in court-ordered services for another six month, or that doing so would be harmful to a child, the author wisely proposes to provide a narrow exception to this requirement. Therefore, 366.22 (b)(2) would revised to read as follows:

(2) (A) Except as provided in paragraph (1) and subject to subparagraph (B), if the child is not returned to a parent or legal guardian at the permanency review hearing and the court finds that reasonable services have not been provided, the court shall extend reunification services for an additional six months.

(B) Notwithstanding subparagraph (A), if the court finds by clear and convincing evidence based on competent evidence from a mental health professional that extending the time period would be detrimental to the child, the court is not required to extend reunification services for an additional six months. The court shall state, either on the record or in writing, the reasons for its finding. Neither the passage of time, nor the child's relationship with the caregiver, shall be grounds in and of themselves for the denial of further reunification services.

As proposed to be amended, the bill would require an additional six months of reunification services to be provided to a parent or guardian unless the court finds by clear and convincing evidence that extending the time period would be detrimental to the child (based on competent evidence from a mental health professional). Neither the passage of time, nor the child's relationship with the caregiver, could be grounds in and of themselves for the denial of further reunification services. Given the crucial need for families to remain intact if possible, and the compelling need for adequate services to be provided to parents who are at risk of losing their children, this seems an appropriate and fair balance of the competing legislative interests in fairness and finality.

ARGUMENTS IN SUPPORT: Co-sponsor Children's Law Center writes that they support the bill because it will "ensure that families receive the support needed to reunify by extending

services for those families who did not receive reasonable reunification services within the 18-month time period.” Co-sponsor Dependency Legal Services writes that the bill will, “ensure that families receive the support needed to reunify by extending services for families who did not receive reunification services within the maximum 18-month time period in statute.” Co-sponsor Root & Rebound states that the bill, “guarantees that parents will receive a meaningful opportunity to make the changes that are necessary to create a safe home for their children.” All three write about the importance of holding social services agencies accountable for providing to families the services that they are required by law to provide:

When social services agencies fall below the minimum standard of services required under the law, AB 937 will require that families have a solution and the opportunity to continue working towards reunification. California’s families would no longer bear the costs of social service’s mistakes and instead would be provided with a meaningful opportunity to unite.

REGISTERED SUPPORT / OPPOSITION:

Support

Children's Law Center of California (co-sponsor)
Dependency Legal Services (co-sponsor)
Root & Rebound (co-sponsor)
A New Way of Life Re-entry Project
Aouon Orange County
California Public Defenders Association (CPDA)
California Youth Connection (CYC)
Children's Law Center of California
Children's Partnership, the
Communities United for Restorative Youth Justice (CURYJ)
East Bay Family Defenders
John Burton Advocates for Youth
Los Angeles Dependency Lawyers, INC.
National Association of Social Workers, California Chapter
Public Counsel
Sister Warriors Freedom Coalition
Starting Over, INC.
The Law Offices of Dale Wilson

Opposition

None on file

Analysis Prepared by: Alison Merrilees / JUD. / (916) 319-2334