

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 937 (McKinnor)
Version: April 12, 2023
Hearing Date: June 27, 2023
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Dependency: family reunification services

DIGEST

This bill requires a juvenile court, when it finds at an 18-month review hearing that reasonable reunification services were not provided to the parent, to order that six additional months of services be provided, unless the court finds, by clear and convincing evidence, that continuing the matter would be detrimental to the child.

EXECUTIVE SUMMARY

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 their parent's custody, the primary objective of the child welfare system is to reunify the child with their family, if doing so is consistent with the best interests of the child. To that end, in most cases a juvenile court orders reunification services – such as counseling for the family, and parenting classes or drug or alcohol treatment for the child's parents – before making a final determination regarding parental rights. Depending on the circumstances, these services may be provided for a period of as little as six months and up to two years.

While dependency proceedings are ongoing, a court must hold regular review hearings at least every 6 months to determine whether a parent can be reunified with their child; the case must be resolved through either reunification or the termination of parental rights within 24 months. In many cases, the reunification process includes providing services to the parent – such as substance abuse services, parenting classes, or financial planning assistance – to help ameliorate the conditions that led to the child's removal. The statutes are clear that, at the 6-month and 12-month review hearings, the case must be extended if the court finds that reasonable reunification services were not offered or provided to the parent. The statutes are less clear, however, about the effect of a finding that reasonable services were not provided at the 18-month review hearing. The California Supreme Court earlier this year held that the failure to provide reasonable services at the period covered by the 18-month review hearing does not require an

automatic extension of the proceedings, and a court may instead proceed to the hearing to terminate parental rights. (*See Michael G. v. Superior Court of Orange County* (2023) 14 Cal.5th 609, 620.)

This bill abrogates the California Supreme Court's recent holding to make clear that, if a court finds that reunification services were not provided to a parent at the 18-month hearing stage, the court must continue the hearing so that the parent can be provided with the services. In recognition of the fact that, in some cases, continuing the case past the 18-month stage could cause unnecessary harm to the child, the bill also includes an exception to the general rule: the court may decline to continue the case if it finds, by clear and convincing evidence based on evidence from a mental health professional, that extending the time for reunification services would be detrimental to the child. The bill is intended to ensure that families are not permanently separated when, through no fault of their own, a parent was not provided with the reunification services required by the court.

This bill is sponsored by the Children's Law Center of California, Dependency Legal Services, and Root & Rebound, and is supported by All of Us or None Orange County, the Family Law Section of the California Lawyers Association, the California Public Defenders Association, California Youth Connection, the Dependency Advocacy Center, East Bay Family Defenders, John Burton Advocates for Youth, the National Association of Social Workers – California Chapter, the Sister Warriors Freedom Coalition, Starting Over, Inc., The Children's Partnership, and the Law Offices of Dale S. Wilson. There is no known opposition. If this Committee passes this bill, it will be heard by the Senate Human Services Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the juvenile court, which has jurisdiction over minors who are suffering or at substantial risk of suffering harm or abuse and may adjudge the minor to be a dependent of the court. (Welf. & Inst. Code, § 300.)
- 2) Provides that the purpose of the juvenile court and the dependency system is to provide the maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm. This safety, protection, and physical and emotional well-being may include the provision of a full array of social and health services to help the child and family and to prevent the reabuse of children. (Welf. & Inst. Code, § 300.2.)

- 3) Requires, at an initial hearing following the removal of a child from their parent's custody:¹
 - a) The social worker to report on, among other things, the available services and the referral methods to those services that could facilitate the return of the child to the custody of their parent. (Welf. & Inst. Code, § 319(b).)
 - b) The court to make a determination on the record 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 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 the State Department of Social Services (DSS). (Welf. & Inst. Code, § 319(f)(1).)
 - c) The court, if it determines that the child can be returned to the custody of their parent through the provision of the services in 3)(b), to place the child with their parent and order that the services be provided. (Welf. & Inst. Code, § 319(f)(3).)
- 4) Requires, at a dispositional hearing held after the child has been removed from the parent's custody, the court to order the social worker to provide child welfare to the child and the child's mother and statutorily presumed father or guardians. In advance of the hearing, the social worker must prepare a report that discusses whether reunification services shall be provided.
 - a) The services ordered may include family reunification services, which shall be provided for up to 12 months, or six months if the child was under three years of age when removed from the custody of their parent.
 - b) The duration of the services may be extended for 18 months if the court finds that there is a substantial probability that the child will be returned to the physical custody of the parent within that extended time period or that reasonable services were not provided; or for 24 months if the court determines that it is in the child's best interest to have the time period extended and there is a substantial probability that the child will be returned to the physical custody of the parent within that period, or that reasonable services were not provided to the parent.
 - c) The court need not order reunification services if certain conditions are met, generally relating to the parent's fitness, unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child. (Welf. & Inst. Code, § 361.5.)
- 5) Requires, for the status hearing held six months after the initial dispositional hearing:

¹ This analysis uses "parent" to refer to a parent, or guardian.

- a) Prior to the hearing, the social worker to file a report with the court regarding, among other things, the services provided or offered to the parent to enable them to assume custody, the progress made, and the recommendation for disposition of the case.
 - b) At the hearing, 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 physical or emotional well-being of the child; the social worker has the burden of establishing that detriment.
 - c) In making the determination under 6)(b), the court to consider, among other things, the effort, progress, or both demonstrated by the parent and the extent to which they availed themselves of services provided.
 - d) If ordering that the child should not be returned to their parents, the court to determine whether reasonable services that were designed to aid the parent in overcoming problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent, and to order that the services be initiated, ordered, or terminated. (Welf. & Inst. Code, § 366.21(a)-(e).)
- 6) Requires, at the permanency hearing, the court to consider, among other things, whether reasonable services that were designed to aid the parent to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent, whether the parent or guardian made effort or progress, and whether they availed themselves of services provided. (Welf. & Inst. Code, § 366.21(f)(1)(A), (C).)
- 7) Requires, at the permanency hearing to determine the permanent placement of the child, the court to determine whether the child should be returned to the physical custody of their parent; if the court determines, by a preponderance of the evidence, that the return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child, the court must determine whether adoption, guardianship, or continued placement in foster care is the most appropriate plan for the child, unless certain conditions are met. (Welf. & Inst. Code, § 366.22(a).)
- 8) Provides, as part of the determination in 7), the court to determine whether reasonable services have been offered or provided to the parent. (Welf. & Inst. Code, § 366.22(a).)
- 9) Provides that a court may, at a permanency hearing, determine that the child should not be returned to their parent but that it is in the best interest of the child to continue to provide additional reunification services, if the parent is making significant or substantial progress, as specified; in such a case, the court may continue the proceedings provided that the permanency review hearing must occur

within 24 months of the date when the child was removed from their parent's physical custody.

- 10) The court may continue the case pursuant to 9) only if it finds there is a substantial probability that the child will be returned to the custody of their parent and safely maintained within that time or that reasonable services have not been provided to the parent, and that:
- a) The parent has consistently and regularly contacted the child.
 - b) The parent has made significant progress in the prior 18 months in resolving the problems that led to the child's removal.
 - c) The parent has demonstrated the capacity and ability both to complete the objectives of their substance abuse treatment plan as evidenced by reports from a substance abuse provider as applicable, or complete a treatment plan post-discharge from incarceration, institutionalization, or detention, or following deportation to their country of origin and their return to the United States, and to provide for the child's safety, protection, physical and emotional well-being, and special needs, as specified. (Welf. & Inst. Code, § 366.22(b).)

This bill:

- 1) Clarifies that a juvenile court, at six-month review hearings, may extend the period in which a parent receives court-ordered services if it finds that reasonable services have not been provided to the parent.
- 2) Modifies the circumstances under which a court may continue a permanency hearing due to the failure to provide reasonable reunification services, as follows:
 - a) If the court finds that reasonable reunification services were not provided, the court shall extend reunification services for six months, subject to the requirements in 9), above.
 - b) If the court finds by clear and convincing evidence, based on competent evidence from a mental health professional, that extending the time period for reunification services would be detrimental to the child, the court is not required to extend reunification services for an additional six months pursuant to 2)(a). In such circumstances 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.
 - c) The court may continue the case only if it makes the findings set forth in 10), above.

COMMENTS

1. Author's comment

According to the author:

AB 937 will ensure that parents are given a fair opportunity to reunify with their children by providing all parents seeking reunification services with 24 months of reunification services if courts have ruled that reunification is not in the detriment of the child. California must meet its obligation to its families, and this proposal would ensure that families receive the support needed to stabilize and reunify.

2. The dependency system and the importance of reunification services

The overarching goal of dependency proceedings is to safeguard the welfare of California's children.² Welfare and Institutions Code section 300 sets forth the circumstances that can bring a child within the jurisdiction of the juvenile dependency court. " 'Although the harm or risk of harm to the child [for jurisdictional purposes] must generally be the result of an act, omission or inability of one of the parents or guardians, the central focus of dependency jurisdiction is clearly on the child rather than the parent.' " ³

As explained by the California Supreme Court:

Dependency proceedings span up to four stages: jurisdiction, disposition, reunification, and permanency. At the jurisdictional stage, the juvenile court determines whether to declare a child a dependent of the court because the child is suffering, or at risk of suffering, significant harm. At the dispositional stage, the court decides if the child can be returned to, or must be removed from, a parent's custody. During the reunification stage, qualifying parents are offered services to address the causes that led to the loss of custody. Finally, if the child cannot be safely returned to the parent within a statutorily specified timeframe, the juvenile court proceeds to the permanency stage, where it either terminates parental rights and places the child up for adoption or it selects another permanent plan, such as placement with a guardian or in long-term foster care. Throughout the proceedings, the juvenile court is instructed to pay careful attention to the well-being of the child, the efforts of the parent, and the services provided by the state to ensure that cases proceed to this final stage only when necessary.⁴

² *In re Josiah Z.* (2005) 36 Cal.4th 664, 673.

³ *In re R.T.* (2017) 3 Cal.5th 622, 626.

⁴ *Michael G. v. Superior Court of Orange County* (2023) 14 Cal.5th 609, 624 (internal citations omitted).

Reunification services are vital component of the state's "strong preference for maintaining the family relationship if at all possible" because services "enable [parents] to demonstrate parental fitness and so regain custody of their dependent children."⁵ This policy is balanced, however, by the interest in promptly resolving a dependent child's case, so that they do not remain in familial limbo indefinitely.⁶

3. The California Supreme Court recently held that a court can proceed with a parental-rights termination hearing at the 18-month hearing even when the court finds that reunification services were not provided to the parent

Although the Legislature has made it clear that courts must make regular findings about whether reunification services have been offered to a parent, the statutes are less clear about the consequences when a court finds that reasonable services were *not* provided at all review hearings. The statutes for the 6-month and 12-month status review hearings expressly state that, if the court finds that reasonable reunification services were not provided to the parent, the court must extend the services for another six months rather than proceeding to a permanency hearing.⁷ The statute covering the 18-month status hearing, however, requires an automatic extension where services were not provided where there were specified barriers to reunification,⁸ and while the statute governing permanency hearings prohibits a court from terminating parental rights if it found that reasonable services were not offered or provided at each hearing where services were required to be considered, it does not expressly state that additional services must then be offered.⁹

Until April 2023, there was a split of authority on whether the failure to provide adequate reunification services within the first 18 months of the child's removal necessitates, or even justifies, an extension of the timeframe for reunification services. Some appellate courts had held that a juvenile court must observe the 18-month deadline for setting a permanency hearing whether or not reasonable reunification services had been provided.¹⁰ But other appellate courts had held to the contrary.¹¹

⁵ *In re Nolan W.* (2009) 45 Cal.4th 1217, 1228 (internal quotation marks omitted).

⁶ *Michael G.*, 14 Cal.5th at p. 625.

⁷ Welf. & Inst. Code, §§ 361.5, 366.21.

⁸ *Id.*, § 366.22(b).

⁹ *Id.*, § 366.26(c)(2)(A).

¹⁰ See, e.g., *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").

¹¹ See, e.g., *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, 1016 ("[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.

In April of this year, the California Supreme Court resolved the split in *Michael G. v. Superior Court*.¹² *Michael G.* determined that, as a matter of statutory interpretation, a juvenile court is not automatically required to grant a further extension of services if it finds that reasonable services were not provided during the 12- to 18-month extension period.¹³ Under *Michael G.*, “[a] parent who has not received reasonable services may seek an extension of services beyond 18 months, but such extensions are not automatic...the juvenile court must consider the child’s interests in deciding whether the extension, and consequent delay to the child’s permanent placement, is warranted.”¹⁴

4. This bill clarifies that the failure to provide reasonable services requires an extension of services at the 18-month period

This bill is intended to clarify that the court must extend the provision of reunification services and delay a permanency hearing when it finds, at the 18-month hearing, that the parent was not provided reasonable reunification services. The bill establishes a limited exception to the automatic requirement, allowing a court to decline to extend reunification services for another six months if the court finds, by clear and convincing evidence based on evidence provided by a mental health professional, that extending the time period for reunification services would be detrimental to the child.

The bill was introduced prior to the California Supreme Court’s issuance of its opinion in *Michael G.*, with the goal of clarifying the ambiguity in the statutes. While *Michael G.*’s holding eliminates the ambiguity, its holding runs contrary to the goal of this bill: *Michael G.* now establishes a statewide rule that a case should not be continued at the 18-month stage when reasonable services have not been provided to the parent. As a result, this bill will now have the effect of abrogating *Michael G.* and establishing that the Legislature intends to require an extension of services at the 18-month stage unless there is specific evidence from a mental health professional that the extension would be detrimental to the child. *Michael G.* relied solely on the text of the existing statutes, so there are no constitutional or separation-of-power impediments to revising the statutes accordingly.

SUPPORT

A New Way of Life Reentry Project (co-sponsor)
Children’s Law Center of California (co-sponsor)
Dependency Legal Services (co-sponsor)
Root & Rebound (co-sponsor)
All of Us or None Orange County
California Lawyers Association, Family Law Section
California Public Defenders Association

¹² *Michael G.*, 14 Cal.5th at p. 620.

¹³ *Ibid.*

¹⁴ *Ibid.*

California Youth Connection
Dependency Advocacy Center
East Bay Family Defenders
John Burton Advocates for Youth
Legislative Women's Caucus
National Association of Social Workers – California Chapter
Public Counsel
Sister Warriors Freedom Coalition
Starting Over, Inc.
The Children's Partnership
The Law Offices of Dale S. Wilson

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation:

SB 463 (Wahab, 2023) eliminates the evidentiary presumption in juvenile court that a parent or guardian'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 or guardian's custody. SB 463 is pending before the Assembly Human Services Committee.

AB 954 (Bryan, 2023) requires a juvenile court to inquire whether a parent or guardian can afford court-ordered services when making reasonable orders relating to a dependent child, and prohibits a court from declaring a parent or guardian noncompliant with the order if it finds that the parent or guardian could not afford the services and the social worker did not provide a comparable free service. AB 954 is pending before the Senate Human Services Committee.

Prior Legislation:

AB 2866 (Cunningham, 2022) modified the standard of proof for establishing at a review hearing that a parent or guardian whose child has been removed from their physical custody was offered reasonable reunification services by raising the standard to the clear and convincing evidence standard, in order to make the standard of proof consistent with the clear and convincing evidence standard already in place for permanent placement hearings.

AB 2805 (Eggman, Ch. 356, Stats 2020) expanded 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.

AB 1702 (Stone, Ch. 124, Stats. 2016) provided that reunification services need not be provided when the court finds that the parent or guardian participated in, or consented to, the sexual exploitation of the child, as prescribed, except if the parent or guardian was coerced into consenting to, or participating in, the sexual exploitation of the child.

PRIOR VOTES:

Assembly Floor (Ayes 80, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Human Services Committee (Ayes 8, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)
