
THIRD READING

Bill No: AB 937
Author: McKinnor (D)
Amended: 8/14/23 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 11-0, 6/27/23
AYES: Umberg, Wilk, Allen, Ashby, Caballero, Durazo, Laird, Min, Niello,
Stern, Wiener

SENATE HUMAN SERVICES COMMITTEE: 5-0, 7/3/23
AYES: Alvarado-Gil, Ochoa Bogh, Hurtado, Menjivar, Wahab

SENATE APPROPRIATIONS COMMITTEE: 7-0, 9/1/23
AYES: Portantino, Jones, Ashby, Bradford, Seyarto, Wahab, Wiener

ASSEMBLY FLOOR: 80-0, 5/30/23 - See last page for vote

SUBJECT: Dependency: family reunification services

SOURCE: A New Way of Life Reentry Project
Children's Law Center of California
Dependency Legal Services
Root & Rebound

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.

ANALYSIS:

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.

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

- 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:
- 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) Provides that 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 shall continue the case only if it makes the findings set forth in 10), above.
- 3) Clarifies that, if the child is an Indian child, the juvenile court at six-month review hearings shall extend the time for the provision of services and continue the permanency hearing if the court finds that active efforts, as defined, were not made to reunite the child with their family, subject to the requirements of 9), above.

Comments

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 six 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 six-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 at the 18-month hearing that reasonable services were not provided. 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 at the 18-month hearing that reunification services were not provided to a parent, 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, this 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. In the same vein, this bill clarifies that a court must continue the case at the six-month, 12-month, and 18-month stages, as applicable, if the child is an Indian child and the court finds that "active efforts," as defined, were not made to reunite the child with their family. This 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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, this bill presents unknown ongoing costs, likely in the high hundreds of thousands to low millions, in local assistance to county welfare departments in order to provide additional months of reunification services to qualifying families (General Fund, Federal Funds). It is unknown how many cases will qualify for additional family reunification services under AB 937. Actual costs will depend how many cases are determined to require additional services under this bill, and for how long such services are required. Cases would be federally eligible, allowing DSS to use federal funding in addition to the General Fund.

SUPPORT: (Verified 9/1/23)

A New Way of Life Reentry Project (co-source)
Children's Law Center of California (co-source)
Dependency Legal Services (co-source)
Root & Rebound (co-source)
All of Us or None Orange County
Alliance for Children's Rights
California Lawyers Association, Family Law Section
California Public Defenders Association
California Youth Connection
Communities United for Restorative Youth Justice
Dependency Advocacy Center
East Bay Family Defenders
John Burton Advocates for Youth
Legislative Women's Caucus
Los Angeles Dependency Lawyers, Inc.
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: (Verified 9/1/23)

None received

ARGUMENTS IN SUPPORT: According to Root & Rebound:

All families, no matter their race, economic background, or physical/mental abilities, deserve a fair chance to reunify through the child welfare system. AB 937 would clarify a split in legal authority as to whether a court can continue reunification beyond the 18-month hearing when a social worker has failed to provide the required services. (In re Michael G. (2021) 69 Cal.App.5th 1133, 1142.) Currently, a parent whose child has been out of their care for 18- months is not guaranteed further reunification services, even if a court has ruled that the social worker has not provided them with sufficient services during the last review period. This bill ensures those parents will receive extended time to reunite with their children.

Under current law, if a court finds that a social worker failed to provide reasonable services at the six or twelve-month hearings, reunification services are extended. This bill would clarify that this same standard applies at the 18-month hearing.

AB 937 guarantees that parents will receive a meaningful opportunity to make the changes that are necessary to create a safe home for their children. When social services agencies fall below the minimum standard of services required under the law, this bill will require that families have a solution and an opportunity to continue working toward reunification. California's families would no longer bear the costs of social services' mistakes.

ASSEMBLY FLOOR: 80-0, 5/30/23

AYES: Addis, Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Chen, Connolly, Megan Dahle, Davies, Dixon, Essayli, Flora, Mike Fong, Vince Fong, Friedman, Gabriel, Gallagher, Garcia, Gipson, Grayson, Haney, Hart, Holden, Hoover, Irwin, Jackson, Jones-Sawyer, Kalra, Lackey, Lee, Low, Lowenthal, Maienschein, Mathis, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Jim Patterson, Joe Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Sanchez, Santiago, Schiavo, Soria, Ta, Ting, Valencia, Villapudua, Waldron, Wallis, Ward, Weber, Wicks, Wilson, Wood, Zbur, Rendon

Prepared by: Allison Whitt Meredith / JUD. / (916) 651-4113

9/4/23 8:53:06

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