

CONCURRENCE IN SENATE AMENDMENTS

AB 937 (McKinnor)

As Amended September 7, 2023

Majority vote

SUMMARY

Requires a juvenile court to order, except in specified very limited circumstances, six additional months of reunification services to a parent or guardian when the court finds at a permanency review hearing that reasonable reunification services have not been provided to the parent or guardian.

Major Provisions

- 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.

Senate Amendments

Apply all of the provisions described above to a juvenile court proceeding that involves an Indian child when the court finds that active efforts to reunite them with their family have not been made; and add chaptering language to address conflicts between this bill and SB 463 (Wahab) of the current legislative session.

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.

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.

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 12 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. 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.

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. 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. 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. 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. 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. 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.

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.

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, Welfare and Institutions Code Section (WIC) 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 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. It 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. It also does the following:

- 1) 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 requiring the court to specify the factual basis for its conclusion that reasonable services have not been provided to the parent or guardian.
- 2) Requires 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.
- 3) 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.

As recently amended, all of the same provisions described above would apply to a juvenile court proceeding that involves an Indian child when the court finds that active efforts to reunite the child with their family have not been made.

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.

Arguments in Support

Co-sponsor Root & Rebound states that this 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 co-sponsors 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.

Arguments in Opposition

No opposition on file.

FISCAL COMMENTS

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 this bill. 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.

VOTES:**ASM JUDICIARY: 11-0-0**

YES: Maienschein, Essayli, Connolly, Dixon, Haney, Kalra, Pacheco, Papan, Reyes, Robert Rivas, Sanchez

ASM HUMAN SERVICES: 8-0-0

YES: Jackson, Sanchez, Alanis, Arambula, Bonta, Bryan, Calderon, Garcia

ASM APPROPRIATIONS: 14-0-2

YES: Holden, Bryan, Calderon, Wendy Carrillo, Dixon, Mike Fong, Hart, Lowenthal, Mathis, Papan, Pellerin, Sanchez, Weber, Ortega

ABS, ABST OR NV: Megan Dahle, Robert Rivas

ASSEMBLY FLOOR: 80-0-0

YES: 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

UPDATED

VERSION: September 7, 2023

CONSULTANT: Alison Merrilees / JUD. / (916) 319-2334

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