

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

AB 2752 (Calderon)
Version: April 30, 2024
Hearing Date: June 25, 2024
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Juvenile court: visitation

DIGEST

This bill modifies the standards under which a juvenile court must order visitation, including unsupervised visitation, between a dependent child and their parent or guardian during the dependency process.

EXECUTIVE SUMMARY

Children who are at risk of abuse, neglect, or abandonment may be deemed dependents of the juvenile court and provided with 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. When a child has been removed from a parent's physical custody but the parent's parental rights have not been terminated, a juvenile court generally must order reunification services for the parent to try and remedy the issues that led to juvenile jurisdiction in the first instance. If the court determines that reunification services are appropriate, the court must also order visitation between the parent and child unless doing so would jeopardize the safety of the child. Current law does not, however, address when the court should order supervised or unsupervised visits.

According to the author and sponsors, the lack of guidance on whether to order supervised or unsupervised visitation has led courts to default to supervised visitation, even when there is no particular risk posed by unsupervised visitation. The author and sponsors report that an order of supervised visitation can, as a practical matter, inhibit visitation entirely due to a lack of available supervisors; alternatively, it can space out visits in a way that harms the existing parent-child relationship.

This bill is intended to provide better guidance to juvenile courts on when to order supervised or unsupervised visits beginning at the dispositional hearing, and clarify

that the presumption should be for unsupervised visits, absent a showing of a specific risk of present harm, for parents for whom reunification services have been ordered. The bill also requires a juvenile court to make a visitation order at the initial petition hearing, without a presumption as to whether the visit is supervised or unsupervised. The author has agreed to certain amendments to bring the scope of the unsupervised visitation presumption more in line with federally recommended best practices.

This bill is sponsored by the Dependency Advocacy Center, Dependency Legal Services, and Los Angeles Dependency Lawyers, Inc., and is supported by 15 organizations, including the Children's Law Center of California and the National Center for Youth Law. This bill is opposed by the County Welfare Directors Association. If this Committee passes this bill, it will then 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 are 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 the following:
 - a) That the purpose of California's juvenile court law is to provide for the protection of the safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor's family ties whenever possible, removing the child from the custody of their parents only when necessary for their welfare or for the safety and protection of the public; if removal of a minor is determined by the juvenile court to be necessary, reunification of the minor with their family shall be a primary objective. (Welf. & Inst. Code, § 202(a).)
 - b) 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) Provides that, in order to maintain ties between the parent or guardian¹ and any siblings and the child, and to provide information relevant to deciding if, and when, to return a child to the custody of their parent, or to encourage or suspend sibling

¹ Going forward, this analysis uses "parent" to include "guardian."

interaction, any order placing a child in foster care, and ordering reunification services, shall provide as follows:

- a) For visitation between the parent and the child, which shall be as frequent as possible, consistent with the wellbeing of the child; however, no visitation order shall jeopardize the safety of the child, and the court may keep the child's address confidential, or limit visitation with a parent who has been convicted of the murder of the other parent, as specified, to protect the child's safety.
 - b) For visitation between the child and any siblings, unless the court finds by clear and convincing evidence that sibling interaction is contrary to the safety or wellbeing of either child.
 - c) For review of the reasons of any suspension of sibling interaction at each periodic review hearing, and for a requirement that, in order for a suspension to continue, the court shall make a renewed finding that sibling interaction is contrary to the safety or well-being of either child.
 - d) If the child is a teen parent who has custody of their child and that child is not a dependent of the court, for visitation among the teen parent, the child's noncustodial parent, and appropriate family members, unless the court finds by clear and convincing evidence that visitation would be detrimental to the teen parent. (Welf. & Inst. Code, § 362.1(a).)
- 4) Provides that, when reunification services are not ordered for the parent, the child's plan for legal permanency shall include consideration of the existence of, and the relationship with, any siblings, including their impact on placement and visitation. (Welf. & Inst. Code, § 362.1(b).)
- 5) Defines "sibling," for purposes of 3) and 4), as a person related to the identified child by blood, adoption, or affinity through a common legal or biological parent. (Welf. & Inst. Code, § 362.1(c).)
- 1) Requires, subject to certain exceptions, whenever a child has been removed from the custody of their parent or guardian,² the juvenile court to order the social worker to provide child welfare services to the child and the child's parents; the welfare services shall include family reunification services as follows:
- a) For a child who was three years or older at the time of removal from the physical custody of their parent, court-ordered services shall be provided for a period of up to 12 months from the date the child entered foster care, with the potential for two six-month extensions if certain conditions are met (for a total of 24 months of reunification services).
 - b) For a child who was under three years on the date of the removal from the physical custody of their parent, court-ordered services shall be provided for

² Going forward, this analysis uses "parent" to include "guardian."

- a period of six months, but no longer than 12 months, from the date the child entered foster care. (Welf. & Inst. Code, §§ 361.5(a) & (a)(1), 366.21, 366.22.)
- 2) Requires a court, as part of its determination of whether to return a child to the custody of their parents, to consider whether the parent has failed to contact and visit the child. (Welf. & Inst. Code, § 366.21(e)(5).)
 - 3) Provides that a court must find, among other factors, that a parent has consistently and regularly contacted and visited with the child before extending reunification services to 18 or 24 months from the date that the child was taken from the custody of their parent. (Welf. & Inst. Code, §§ 366.21(g); 366.22(b).)
 - 4) Provides that, when a court determines that a permanency hearing shall be held and terminates reunification services, the court shall continue to permit the parent to continue to visit the child pending the hearing unless it finds that visitation would be detrimental to the child. (Welf. & Inst. Code, §§ 366.21(h), 366.22(a)(3), 366.25(a).)

This bill:

- 1) Defines “unsupervised visitation” as contact between a parent and one or more children without requiring the presence of a third person.
- 2) Requires a juvenile court, at an initial petition hearing, to make an order regarding visitation between the child and parent.
 - a) The order shall set forth a frequency and duration that is most conducive to quality family time, and shall specify whether the visitation shall be supervised pending the disposition hearing.
 - b) If the court makes an order for supervised visitation, the court shall specify the factual basis for its order, and shall order the county child welfare agency to assess persons proposed by a parent to supervise the visitation.
 - c) If, after assessment, no person has been approved to supervise the visit, the agency or its designee shall supervise the visits at a time when both the parent and the child are available.
 - d) The court shall order that the agency has discretion to liberalize the visitation to unsupervised unless the court finds that granting this discretion would be contrary to the child’s safety.
 - e) Visits shall take place in the least restrictive setting that is most conducive to family time.
- 3) Provides that, when a court makes an order regarding visitation at a dispositional hearing, the court shall order unsupervised visitation for the parent unless the court finds that unsupervised visitation is contrary to the child’s welfare and either of the following circumstances exist:

- a) Unsupervised visitation would pose a safety risk to the child based on the child's specific needs and circumstances or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without having supervised visitation. A determination that the parent or guardian was previously noncustodial shall not be the sole basis for this finding.
 - b) There is substantial evidence that a parent or guardian of the child is likely to flee the jurisdiction of the court, and, in the case of the Indian child, fleeing the jurisdiction will place the child at risk of imminent physical damage or harm.
- 4) Requires an order for visitation under 2) to set forth a frequency and duration that is most conducive to quality family time, whether the visitation shall be supervised, and any other specific terms or restrictions for visitation.
 - 5) Provides that, if a court makes an order for supervised visitation under 2), the court shall specify the factual basis for its order, and shall order the county child welfare agency to assess persons proposed by a parent to supervise the visitation. If, after assessment, no person has been approved to supervise the visit, the agency or its designee shall supervise the visits at a time when both the parent and child are available. The court shall order that the agency has discretion to liberalize the visitation to unsupervised unless the court finds that granting this discretion would be contrary to the child's safety.
 - 6) Provides that visits ordered under 2) shall take place in the least restrictive setting that is most conducive to family time.
 - 7) Requires a social worker, in their supplemental report filed prior to a 6-month, 12-month, 18-month, or 24-month hearing, if visitation has not been liberalized, to specify what efforts were put in place to liberalize the parent's visits and why liberalization was contrary to the child's welfare; and for the court, at those hearings, to make an order addressing visitation under the same conditions as 3)-6).
 - 8) Adds visitation to the list of factors that the court must consider at a permanency hearing in determining whether reasonable reunification services were provided.
 - 9) Provides that, if a court makes the findings necessary to continue a case from the 18-month hearing to the 24-month hearing, the court's findings constitute prima facie evidence that visitation between the parent and child does not need to be supervised, and that any party seeking to maintain or institute supervised visitation bears the burden of rebutting this presumption by a preponderance of the evidence.

COMMENTS

1. Author's comment

According to the author:

Current law provides general guidelines for family visits when a child enters the Child Welfare Services system. However, it fails to address when a family visit needs to be supervised, the duration of the visit, and where it should take place. As a result, most child welfare agencies automatically require supervised visits, even when the additional monitoring may be unnecessary. Finding trained monitors is a long and expensive process, which often results in delayed visitations. Many visits are also scheduled in restrictive settings that are not conducive to quality family time. Research shows that regular family visits in safe environments expedite permanency and increase the likelihood of reunification.

AB 2752 remedies these problems by creating a rebuttable presumption that visits between a parent and their child in foster care are unsupervised, unless there is a determination that the child's safety is in danger. In cases where the court determines that supervision is necessary, this bill requires bench officers to set the frequency and duration of visitation. Children who enter the foster system deserve every opportunity to safely bond with their families, with the ultimate goal of family reunification.

2. Background on the dependency process and parental visitation

The overarching purpose of the juvenile court is to provide for the protection and safety of the public and each child under the court's jurisdiction and, where possible, to preserve and strengthen the child's family ties so that a child is removed from their parent's custody only when necessary for the child's welfare or the safety and protection of the public.³ The juvenile court may determine that a child is a dependent of the court if the child has suffered, or is at risk of suffering, serious physical harm, abuse, or neglect.⁴ " '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.' " ⁵

When a child is determined to be a dependent of the juvenile court, the court may begin proceedings to remove the child from the custody of their parent(s), or, if the child has been removed on an emergency basis, to determine whether the child should be

³ Welf. & Inst. Code, § 202(a).

⁴ *Id.*, § 300.

⁵ *In re R.T.*, 3 Cal.5th 622, 626.

returned to parental custody.⁶ If, after a series of hearings, a parent is found to be unfit, the court can terminate the parent's parental rights.⁷ When a child is removed, however, "reunification of the minor with [their] family shall be a primary objective."⁸ To that end, when a child has been removed from a parent's physical custody but the parent's parental rights have not been terminated, a juvenile court generally must order reunification services for the parent to try and remedy the issues that led to juvenile jurisdiction in the first instance, such as parenting classes or drug or alcohol treatment.⁹ These "[f]amily reunification services play a critical role in dependency proceedings" and should be "tailored to the particular needs of the family."¹⁰

Additionally, "[v]isitation is a necessary and integral component of reunification plan."¹¹ When a juvenile court orders reunification, it must also order visitation between the parent and child unless doing so would jeopardize the safety of the child.¹² "Visitation shall be as frequent as possible, consistent with the well-being of the child."¹³ Visitation is essential "to maintain ties between the parent" and the child and "to provide relevant information relevant to deciding if, and when, to return a child to the custody of" their parent.¹⁴ In subsequent hearings on whether to reunify the parent and child or continue the matter, the juvenile court will consider, among other factors, the frequency of visitation.¹⁵ If a child welfare agency "limits visitation in the absence of evidence showing the [parent's] behavior has jeopardized or will jeopardize the child's safety, it unreasonably forecloses reunification...and does not constitute reasonable services."¹⁶

The United States Department of Health and Human Services' Administration for Children and Families (ACF) has recently provided guidance on the importance of family time, particularly unsupervised family time, for children in out-of-home care to see their parents.¹⁷ The ACF cites, as best practices, statutes that establish a presumption in favor of unsupervised visitation,¹⁸ and specifically recommends that states "[c]reate

⁶ Welf. & Inst. Code, §§ 305, 319, 325, 355, 361.3.

⁷ See *id.*, §§ 360, 361.3, 366.26.

⁸ Welf. & Inst. Code, § 202(a).

⁹ *Id.*, § 361.5.

¹⁰ *In re M.F.* (2019) 32 Cal.App.5th 1, 13.

¹¹ *In re C.C.* (2009) 172 Cal.App.4th 1481, 1489 (internal quotation marks omitted).

¹² Welf. & Inst. Code, § 362.1; see also *In re F.P.* (2021) 61 Cal.App.5th 966, 973 ("If visitation is inconsistent with the well-being of the child, or would be detrimental to the child, the juvenile court has the discretion to deny such contact.").

¹³ Welf. & Inst. Code, § 362.1.

¹⁴ *Ibid.*

¹⁵ *Id.*, §§ 366.21, 366.22.

¹⁶ *Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1427.

¹⁷ See ACF, Bulletin re Family Time and visitation for children and youth in out-of-home care, Log No. ACYF-CB-IM-20-02 (Feb. 5, 2020) (ACF Bulletin).

¹⁸ *Id.* at pp. 6-8.

and promote practices that presumes family time should be unsupervised absent an identified present danger of harm.”¹⁹

3. Current law provides no guidance on when a court should order supervised or unsupervised visitation

Current law is silent on whether court-ordered visitation should be supervised or unsupervised. Current law also fails to set forth factors that a juvenile court should consider in determining whether to order supervised or unsupervised visitation. Stakeholders report that, as a result, courts nearly always default to supervised visits, regardless of the circumstances of the case.

According to the Children’s Law Center of California, which represents children in dependency proceedings in Los Angeles, Placer, and Sacramento Counties, “only granting supervised visits without taking into consideration the circumstances of the removal of the child” deprives children “of much-needed family time”:

As children are removed from their parents and supervised visits are ordered, children may go weeks without seeing their parents. If a family cannot provide an approved monitor, current law does not require the agency to provide one. As a result, visits often do not happen at all... Since statutory hearings are scheduled in six-month increments, a family that is safe to enjoy unsupervised visits may be left with unnecessary restrictions. This is devastating to a child who may not understand what is happening.

The ACF guidance specifically recommends against a standardized approach to visitation that defaults to supervised visitation.²⁰

4. This bill requires a juvenile court to address visitation with the parent at the initial petition hearing, and establishes a presumption for unsupervised visitation beginning at the dispositional hearing, which can be overcome if certain conditions are met

This bill modifies California’s laws regarding visitation between a parent and a dependent child, by establishing a presumption in favor of unsupervised visitation, beginning at the dispositional hearing, unless the court finds that unsupervised visitation presents specific risks to the child based on the facts of the case. The presumption of visitation is limited to a parent for whom reunification services has been ordered; if the court determines that reunification is not in the child’s best interest, the presumption will not apply.

¹⁹ *Id.* at p. 13.

²⁰ *Id.* at p. 2.

The bill also provides that, if the court orders supervised visitation, it must set forth the factual basis for the order. Additionally, if the court orders supervised visits, the court must order that the child welfare agency may liberalize the visitation to unsupervised visits, unless the court specifically finds that such discretion would be contrary to the child's safety. Furthermore, the bill requires that, if visitations are not liberalized, the county welfare agency must explain (1) what efforts were made to liberalize the visits, and (2) why liberalization was contrary to the child's welfare. The author has agreed to amend the bill to conform the presumption for unsupervised visitation to language approved by the federal government.

The bill also requires a juvenile court to make an order regarding visitation at the initial petition hearing, rather than waiting for the dispositional hearing; at this early stage, however, there is no presumption as to whether the visitation should be supervised or unsupervised.

In all cases, the bill requires that visits should take place in the least restrictive setting that is most conducive to family time.

5. Amendments

As noted above, the author has agreed, in response to concerns from the Committee and stakeholders, to modify the presumption for unsupervised visitation, so that it more closely adheres to the language used in the ACF guidance. This language will not replace the provision requiring the court to address visitation at the initial hearing; it will be implemented at the disposition hearing and onward. The language is as follows, subject to any nonsubstantive technical or conforming changes the Office of Legislative Counsel may make:

Amendments

In all sections of the bill establishing a presumption for unsupervised visitation at the dispositional hearing stage and later, the presumption shall be as follows:

“The court shall order unsupervised visitation for the parent or guardian unless the court finds that unsupervised visitation would present an identified danger of present harm to the child, and there is no reasonable means by which the child's physical or emotional health may be protected without having supervised visitation.”

6. Arguments in support

According to Dependency Legal Services, one of the bill's sponsors:

In 2021, Congress unanimously passed HB 1194, allowing the presumption that family time visits should be unsupervised unless there is a determination that the child is in danger. Existing law in California does not specify factors to consider when determining whether supervised visits are necessary to protect the health and safety of the child. As a result, most child welfare agencies typically insist that the parent's contact with the child is supervised by default.

Profound damage is caused when a child is separated from their parent, and requiring supervised family time without considering the circumstances of the family's separation merely exacerbates that damage. According to the Children's Bureau, regular family visits expedite permanency and increase the likelihood of reunification. Removal of a child from a parent's care does not necessarily mean negligence and abuse occurred by the parents. A child may be removed because the home environment poses a risk to the child. Likewise, the inability of a parent to provide the appropriate resources to care for a child may result in their removal. Children living in poverty are more likely to be reported to a child welfare agency, with 47% of families who have children placed in the system living below the federal poverty guidelines. A comparative study between states that adopted a state-level Earned Income Tax Credit (EITC) found that states offering the credit saw an 11% decrease in foster care entries compared to states without the state-level EITC. By only granting supervised visits without taking into consideration the circumstances of the removal of the child, children are deprived of much-needed family time...

AB 2752 requires the juvenile court to order unsupervised visitation time between a parent or legal guardian and their child, unless the court finds that unsupervised visitation will harm the physical or emotional health of the child. In cases where the court determines that supervision is necessary, this bill requires bench officers to set the frequency and duration of visitation. This bill would also ensure that visits take place in the least restrictive setting that is most conducive to quality family time.

7. Arguments in opposition

According to the County Welfare Directors Association:

While CWDA appreciates the author's intent to ensure parents in the child welfare system, especially non-offending, non-custodial parents, have appropriate visitation schedules, CWDA believes those decisions are best made on an individual basis between all court parties, including the judge. CWDA also

opposes prohibiting supervised visitations from child welfare offices unless the physical safety of the child is at risk. County child welfare agencies strive to have welcoming visitation rooms to foster connections for parents and children on site while allowing for supervised visitation and observation. We look forward to engaging with the author on these important issues to improve our child welfare system and ensure that families have the best chance to reunify.

SUPPORT

Dependency Advocacy Center (co-sponsor)
Dependency Legal Services (co-sponsor)
Los Angeles Dependency Lawyers, Inc. (co-sponsor)
A New Way of Life Reentry Project
All of Us or None
Bar Association of San Francisco
California Alliance of Child and Family Services
California Lawyer's Association, Family Law Section
California Public Defenders Association
Children's Law Center of California
Coalition of California Welfare Rights Organizations
Families Inspiring Reentry & Reunification 4 Everyone
Legal Services for Prisoners with Children
National Center for Youth Law
Public Counsel
Root & Rebound
Seneca Family of Agencies
The Law Offices of Dale S. Wilson

OPPOSITION

County Welfare Directors Association

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: SB 1021 (Durazo, 2020) would have provided that, when a juvenile court orders a child detained at the initial petition hearing, the court shall not restrict visitation between a parent and child any more than necessary to ensure the child's safety and wellbeing; and that, if a juvenile court orders visitation at a status review hearing, the court shall consider specified factors in determining the specific visitation plan, SB 1021 was held in the Senate Judiciary Committee due to COVID-19-related bill limits.

PRIOR VOTES:

Assembly Floor (Ayes 55, Noes 10)
Assembly Appropriations Committee (Ayes 11, Noes 3)
Assembly Human Services Committee (Ayes 5, Noes 0)
Assembly Judiciary Committee (Ayes 9, Noes 2)
