

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

AB 2664 (Bryan)
Version: February 14, 2024
Hearing Date: July 2, 2024
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Foster youth

DIGEST

This bill clarifies that, if a dependent child is returned to the custody of their parent or at a disposition hearing, and then a subsequent petition is brought to remove the child again, the child is deemed to have entered care on the date of the jurisdictional hearing on the subsequent petition or 60 days after the child was initially removed from physical custody of their parent or guardian via a subsequent petition, whichever is earlier.

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, in rare cases, up to two years. If a child is returned to their parent's custody at the dispositional hearing, however, reunification services are unnecessary; the court instead orders family maintenance services, which are intended to address the issues that led to the juvenile court's jurisdiction.

Last year, a Court of Appeal opinion held that the timeline for the provision of reunification services is running even in cases where a child was returned to their parent's custody at the dispositional hearing. (*See In re Damian L.* (2023) 90 Cal.App.5th 357 (*Damian L.*)) As a result, if a child is subsequently taken into custody under a supplemental petition, the time the child spent in the parent's custody would be

counted against the parent's reunification time frame – even though no reunification services were being provided. According to the author and sponsor, this approach turns the intent of reunification services on its head; a parent could end up with as few as 60 days of reunification services before the county moved to permanently place their child with someone else.

This bill is intended to clarify the statutes establishing the time frames for reunification services to make clear that, when a child is returned to their parent's custody at the disposition and a supplemental petition is subsequently filed, the timeline for reunification services runs from the earlier of the date that the jurisdictional hearing on the supplemental petition was held, or the date that the child was initially removed from custody pursuant to that supplemental petition. The author has agreed amendments to ensure that it addresses all of the language interpreted in the *Damian L.* opinion.

This bill is sponsored by the Children's Law Center, Dependency Legal Services, and Los Angeles Dependency Lawyers, Inc., and is supported by the California Alliance of Caregivers. This Committee has not received timely opposition to this bill. The Senate Human Services Committee passed this bill with a vote of 5-0.

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) Provides that, after a petition is filed alleging that a child is under the jurisdiction of the juvenile court, the court shall make a finding on the petition. If it found that the minor is not within the jurisdiction, the court shall dismiss the petition; if it is found that the child is within the jurisdiction, the court shall make findings and issue an order accordingly. (Welf. & Inst. Code, §§ 345, 356.)

- 4) Establishes a series of hearings for a child found to be under the jurisdiction of the juvenile court, as follows:¹
- a) Following the jurisdictional hearing, the court shall hear evidence on the question of the proper disposition to be made of the child (the “dispositional hearing”). (Welf. & Inst. Code, § 358.)
 - b) Six months after the dispositional hearing, but no later than 12 months after the date the child entered foster care pursuant to 5), whichever is earlier, the court shall hold a review hearing. The court shall 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. (Welf. & Inst. Code, § 366.21(e).)
 - c) No later than 12 months after the date the child entered foster care pursuant to 5), the court shall hold a permanency hearing. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to their home, and if so, when, within the time limits set forth in 7). The court shall 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. (Welf. & Inst. Code, § 361.21(f).)
 - d) If the child was not returned to the custody of a parent at the permanency hearing, the court shall either:
 - i. Continue the case for six months for a permanency review hearing; the court may do so only if it finds there is a substantial probability that the child will be returned to the physical custody of the parent within the extended time period or that reasonable services were not provided to the parent (Welf. & Inst. Code, § 361.21(g)(1)); or
 - ii. Order a hearing on the termination of parental rights or that the child remain in foster care, as provided (Welf. & Inst. Code, § 366.21(g)(4), (5)).
 - e) When a case has been continued for a permanency review hearing, the hearing shall occur within 18 months after the date the custody of their parent. The court shall 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. If the court finds that the child should not be returned to the custody of their parent, the court shall either:

¹ This is a summary that omits many of the contingent details, including the different findings and burdens of proof applicable when the child in question is an Indian child, as defined. Because this bill addresses the timing of the provision of services, the general timeline should suffice.

- i. Order a permanency hearing to be held, in order to determine whether adoption or continued foster placement is most appropriate for the child; or
 - ii. If the court determines by clear and convincing evidence that the best interests of the child would be met by the provision of additional reunification services to a parent who is making significant and consistent progress, as specified, continue the case for up to six months for a subsequent permanency review hearing. (Welf. & Inst. Code, § 366.22(a), (b).)
 - f) If the court continues the permanency review hearing, the court must hold the continued hearing within 24 months of the date that the child was originally taken from the physical custody of their parent. At that hearing, the court must either return the child to the custody of the parent or order a permanency hearing to be held. (Welf. & Inst. Code, § 366.22(b).)
- 5) Provides that, regardless of their age, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to 3) or the date that is 60 days after the date on which the child was initially removed from the physical custody of their parent or guardian.² (Welf. & Inst. Code, § 361.49.)
- 6) Requires a court, when a child has been removed from the custody of their parents, to order the social worker to provide child welfare services to the child and the child's parents, including family reunification services, subject to specified exceptions. (Welf. & Inst. Code, § 361.5(a).)
- 7) Provides that family reunification services provided pursuant to 6) shall be provided as follows:
- a) For a child who, on the date of initial removal from the physical custody of the parent, was three years of age or older, court-ordered services shall be provided beginning with the dispositional hearing and ending 12 months after the child entered foster care as provided, unless the child is returned to the home of the parent. (Welf. & Inst. Code, § 361.5(a)(1)(A).)
 - b) For a child who, on the date of initial removal from the physical custody of the child's parent or guardian, was under three years of age, court-ordered services shall be provided for a period of six months from the dispositional hearing as provided, but not longer than 12 months from the date the child entered foster care, as provided, unless the child is returned to the home of the parent. (Welf. & Inst. Code, §§ 361.5(a)(1)(B).)
 - c) 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 the physical custody of the parent if it can be shown, at the permanency hearing, that the permanent plan for the child is that the child will be returned and

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

- safely maintained in the home within the extended time period, as provided. (Welf. & Inst. Code, § 361.5(a)(3)(A).)
- d) Court-ordered services may be extended up to a maximum time period not to exceed 24 months after the date the child was originally moved from physical custody of their parent if it is shown, at the permanency review hearing, that the permanent plan for the child is that the child will be returned and safely maintained in the home within the extended time period, as provided. (Welf. & Inst. Code, § 361.5(a)(4)(A).)
- 8) Provides that a supplemental petition relating to a child who has been declared a dependent of the juvenile court shall be filed as follows:
- a) In any case where the county alleges new facts or circumstances, other than those under which the original petition was sustained, sufficient to give the juvenile court jurisdiction over the child, the county shall file a subsequent petition. Unless specifically provided, all procedures and hearings required for an original petition are applicable to this subsequent petition. (Welf. & Inst. Code, § 342.)
- b) In any case where an order is necessary to change or modify a previous order by removing a child from the custody of a parent, guardian, relative, or friend and directing the child to a foster home or an institutional setting, a supplemental petition must be filed by the social worker setting forth facts sufficient to support the conclusion that the previous disposition was not effective. (Welf. & Inst. Code, § 387.)

This bill:

- 1) States that, when a child is returned to the home of their parent at the dispositional hearing pursuant to an initial petition and subsequently removed from the parent's home pursuant to a supplemental petition brought under Welfare and Institution Code sections 342 or 387, the child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to the supplemental petition or the date that is 60 days after the date the child was initially removed from the physical custody of their parent via the supplemental petition.

COMMENTS

1. Author's comment

According to the author:

AB 2664 will prevent counties from prematurely terminating a parent's right to their child by clarifying that the deadline for family reunification should not start until the dispositional hearing where reunification services are actually ordered. For years, this has been the practice across counties in California; however, a

recent court case created confusion around these timelines, leading to situations where parents are losing months of critical time needed to work toward reunifying with their child. For a system that only affords parents 6 to 18 months to fight for their child, every day counts. This bill will ensure that parents are actually granted the time that is already promised to them by law.

2. Background on the dependency process and the timeline for reunification

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

Once a child has been declared a dependent of the juvenile court, the court holds a dispositional hearing.⁶ "Generally, the court chooses between allowing the child to remain in the home with protective services in place and removing the child from the home while the parent engaged in services to facilitate reunification."⁷ Services for a parent who retains custody over their child are called "family maintenance services"; services for a parent who loses custody over their child are called "reunification services." "Reunification services implement the law's strong preference for maintaining the family relationships if at all possible...because services enable parents to demonstrate parental fitness and so regain custody of their dependent children."⁸

The interest in family preservation, however, is balanced "with the child's interest in the prompt resolution of [their] custody status and long-term placement."⁹ To that end, the Welfare and Institutions Code section 361.5 (Section 361.5) sets time limits on the provision of reunification services as follows:

- For a child who was, on the initial date of removal, three years of age or older, reunification services shall be provided beginning with the initial dispositional hearing and ending 12 months after the date the child entered foster care, as set

³ Welf. & Inst. Code, § 202(a).

⁴ *Id.*, § 300.

⁵ *In re R.T.*, 3 Cal.5th 622, 626.

⁶ *See* Welf. & Inst. Code, § 358.

⁷ *In re E.E.* (2020) 49 Cal.App.5th 195, 205.

⁸ *Michael G. v. Superior Court* (2023) 14 Cal.5th 609, 624 (cleaned up).

⁹ *Id.* at p. 625.

forth in Welfare and Institutions Code section 361.49 (Section 361.49), unless the parent is returned to the home of the parent.¹⁰

- For a child who was, on the initial date of removal, under three years of age, court-ordered services shall be provided for a period of six months from the dispositional hearing, but not longer than 12 months from the date the child entered foster care, as set forth in Section 361.49, unless the child is returned to the home of the parent.¹¹
- Court-ordered services may be extended to a maximum time period not to exceed 18 months after the date the child was originally removed from the physical custody of their parent, if it can be shown that there is a substantial probability that the child will be returned to the custody of their parent.¹²
- In rare cases, court-ordered services may be extended to a maximum time period not to exceed 24 months after the date the child was originally removed from the physical custody of their parent, if it is shown, by clear and convincing evidence, that the best interest of the child is served by the provision of reunification services to a parent, as specified.¹³

At each status review hearing – generally held at six-month intervals to align with the reunification services timeline – the court must determine whether the child can be returned to their parent’s custody and whether reasonable reunification services were provided to the parent.¹⁴ If the court determines that reunification services have not been successful, the court must terminate reunification efforts and set the matter for a permanency hearing to implement a permanent plan for the child’s custody.¹⁵

Finally, if the child is returned to the custody of the parent at the dispositional hearing or at a status reviewing, but subsequent facts require the child to be removed from the parent’s custody again, the county must file a supplemental petition.¹⁶ The procedures and hearings required for a supplemental petition are the same as those for an original petition.¹⁷

3. The *In re Damian L.* opinion

In April 2023, the Fifth District Court of Appeal issued *In re Damian L.*,¹⁸ which addressed the provision of reunification services when a child was removed from the custody of their parent, then returned to the parent’s custody at the dispositional

¹⁰ Welf. & Inst. Code, § 361.5(a)(1)(A).

¹¹ *Id.*, § 361.5(a)(2)(B).

¹² *Id.*, §§ 361.5(a)(3), 366.21(g).

¹³ *Id.*, §§ 361.5(a)(4), 366.22(b).

¹⁴ *Michael G.*, *supra*, 14 Cal.5th at p. 625.

¹⁵ Welf. & Inst. Code, §§ 366.21, 366.22.

¹⁶ Welf. & Inst. Code, §§ 342, 387.

¹⁷ *Id.*, § 342(b).

¹⁸ 90 Cal.App.5th 357.

hearing, then was removed again on a subsequent petition.¹⁹ Prior to *In re Damian L.*, there was no published authority on Section 361.5's time limit on services continues to run even when a child is returned to their parent's custody.²⁰

In *In re Damian L.*, the children were removed from the mother's custody in September 2019.²¹ At the dispositional hearing, which wasn't held until June 2020 due to a number of continuances, the children were returned to the mother's home and the court ordered family maintenance services.²² In January 2021, the child was removed from the home again and a supplemental petition was filed.²³ At the dispositional hearing on the supplemental petition in November 2021, the court ordered reunification services and set a 12-month review hearing for March 2022.²⁴ The county welfare department objected to the provision of services, arguing that, because it had been more than 24 months since the September 2019 initial removal, the mother was no longer entitled to reunification services.²⁵ The county appealed the order granting reunifications services.²⁶

The Court of Appeal held that, as a matter of statutory interpretation, the 18-month and 24-month time limits on reunification services run from the date of the initial removal, even when a child is returned to their parent's custody at the dispositional hearing.²⁷ The opinion states that "[o]nce a child is initially removed from their parent's custody, a deadline is set, and it is not reset if the parent regains custody at some point during the time period."²⁸ Thus, "[t]he usual requirement of 12 months of court-ordered services in [Section 361.5] is still constrained by the 18-month outer limit."²⁹

4. This bill is intended to ensure that, when a child is returned to their parent's custody at a dispositional hearing, the clock does not start running on reunification services

According to the author, sponsor, and stakeholders, the *Damian L.* holding is predicated on an overly harsh interpretation of Section 361.5 – one that ignores the implications for families who are undergoing family maintenance. Because *Damian L.* ties the provision of reunification services to the initial date of removal under the original petition, it creates a situation where the reunification timeline is running even while the child is

¹⁹ *Id.* at p. 367.

²⁰ *Ibid.*

²¹ *Id.* at p. 361.

²² *Id.* at p. 364.

²³ *Id.* at p. 365.

²⁴ *Id.* at pp. 368.

²⁵ *Id.* at p. 367.

²⁶ *Id.* at p. 368.

²⁷ *Id.* at p. 376.

²⁸ *Ibid.*

²⁹ *Id.* at p. 375. While the appeal of the order for reunification services was pending, the mother was awarded sole legal and physical custody of the children and the juvenile court's jurisdiction was terminated (*id.* at p. 371 & n. 2), meaning the reunification services ordered by the trial court – and prohibited under *Damian L.*'s holding – were successful.

living at home with their parent. As explained by the Children’s Law Center of California, one of the bill’s sponsors:

This legal fiction may require courts to start looking for permanency options, including termination of parental rights and adoption, based on compliance with foster care timelines for children residing in the home of the parents until a subsequent removal. A child could have been in foster care for less than 60 days but considered “timed out” of reunification for the purpose of the timeline at a subsequent removal.

The result of *Damian L.* – sharply curtailing the availability of reunification services for parents who, at the dispositional hearing, were deemed fit to resume custody of their children – seems contrary to the state’s preference for family preservation whenever possible.³⁰ Nevertheless, it does appear that the Section 361.5 time frames are not expressly tied to the first petition under which reunification services are ordered, leaving the statute susceptible to *Damian L.*’s interpretation.

This bill is intended to ensure that the reunification timeline does not begin when a child is returned to their parent’s custody at the dispositional hearing. Under this approach, if a child is subsequently removed from their parent’s custody under a supplemental petition, the reunification timeline runs from the events connected to that removal – avoiding the perverse result of a parent who recently lost custody of their child being eligible for only a few months of reunification services before losing their child entirely. This approach also avoids prejudicing noncustodial parents, who might not have learned of the child’s removal from the other parent’s custody until long after the initial removal.

To be clear, this bill would not change the reunification services timeline for a parent who regains custody at some point after the dispositional hearing. In those cases, reunification services would already have been ordered at the dispositional hearing; this bill is not intended to start and stop the timeline every time a child is returned home. Instead, this bill merely clarifies that the reunification services clock does not start running at the dispositional hearing when a child is returned home at that point. The author has agreed to minor amendments to ensure that the bill addresses all of the statutory language interpreted by the *Damian L.* opinion.

5. Amendments

As noted above, the author has agreed to amend the bill to ensure that it addresses all of the language interpreted in the *Damian L.* opinion. The amendments are as follows, subject to any nonsubstantive changes the Office of Legislative Counsel may make:

³⁰ E.g., *In re Nolan W.* (2009) 45 Cal.4th 1217, 1228.

Amendment

At page 2, after line 17, insert:

(c) When a child is returned to the home of the parent or guardian at the dispositional hearing pursuant to a petition brought under Section 300 and subsequently removed through a petition brought under Section 342 or 387, the child shall be deemed to have been originally removed from the physical custody of their parent or guardian on the date they were taken into custody by the social worker via the petition filed under Section 342 or 387.

6. Arguments in support

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

The Adoptions and Safe Families Act (ASFA) created a federal statutory scheme of timelines to ensure that children do not languish in foster care. Under these guidelines, families that are ordered into reunification services are given a very limited period of time to complete their case plan to remedy the problems that resulted in child welfare intervention and to provide a safe home for their children. California has enacted its own timelines, often providing more stringent requirements than the federal standards, to ensure that children are either returned swiftly to their parents or provided with another permanent plan for their childhood. The Welfare and Institutions Code (WIC) specifically outlines calculations for each of the status review hearings during the reunification period (6-month, 12-month, and 18-month), all three of which are calculated differently but are expressly outlined in the code.

Unfortunately, a recent appellate court case has called this scheme into question. *In re Damian L* (90 Cal. App. 5th 357), the court found that children removed at detention but returned to their parent shortly after at the dispositional hearing, were subject to the same timeline constraints as children who continued to be in foster care after a removal order and an order for reunification.

This recent holding presents several problems. First, it treats children living at home with their parent as if they continue to languish in foster care...

Moreover, it presents a significant due process problem for non-custodial parents. Those parents could be ineligible for reunification services based on the timeline, even though they had never been offered assistance by the county child welfare department. Their children could be removed and they could immediately face the termination of their parental rights, without being offered a single service to reunify.

SUPPORT

Children’s Law Center of California (co-sponsor)
Dependency Legal Services (co-sponsor)
Los Angeles Dependency Lawyers, Inc. (co-sponsor)
California Alliance of Caregivers

OPPOSITION

None received

RELATED LEGISLATION

Pending legislation: AB 2282 (McKinnor, 2024) modifies the provision applying a presumption against ordering reunification services for a parent whose child has been taken from the parent’s custody, in cases where the parent has been convicted of a violent felony, as defined, to apply only where the parent has been convicted of a violent felony against a child. AB 2282 is pending before this Committee.

Prior legislation:

AB 1134 (McKinnor, 2023) would have modified the provision applying a presumption against ordering reunification services for a parent whose child has been taken from the parent’s custody, in cases where the parent has been convicted of a violent felony, as defined, to apply only where the parent has been convicted of a violent felony against a child under the custody of the parent. AB 1134 died in the Assembly Judiciary Committee.

AB 937 (McKinnor, Ch. 458, Stats. 2023) required a juvenile court to extend reunification services for an additional 6 months if it determines, at the 18-month hearing, that reasonable services had not been provided.

AB 2866 (Cunningham, Ch. 165, Stats. 2022) required a juvenile court, when determining whether reasonable reunification services were provided at the 6-month and 12-month hearings, to make that determination by clear and convincing evidence.

AB 2159 (Bryan, Ch. 691, Stats. 2022) prohibited the denial of reunification services to a parent who is in custody prior to conviction, as specified.

PRIOR VOTES:

Senate Human Services Committee (Ayes 5, Noes 0)
Assembly Floor (Ayes 65, Noes 0)
Assembly Appropriations Committee (Ayes 14, Noes 0)
Assembly Judiciary Committee (Ayes 12, Noes 0)
Assembly Human Services Committee (Ayes 7, Noes 0)
