

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

AB 1324 (Bryan)
Version: March 13, 2023
Hearing Date: June 27, 2023
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Child welfare agencies: enforcement

DIGEST

This bill requires the Department of Child Support Services (DCSS) on or before January 1, 2025, to identify and rescind all child support referrals, cease enforcement of the child support orders, and seek modification of the orders when necessary to eliminate ongoing obligations, as specified. The bill also requires the department, on or before June 1, 2024, to implement these provisions by means of departmental letters or similar written instructions.

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 parents, the primary objective of the child welfare system is to safely reunify the child with their family. To support this objective, 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 in most cases.

Until recently, federal law required states to have a policy requiring certain parents with children in the foster system to pay child support to reimburse the state for benefits provided to the child in care. In 2022, however, the federal Department of Health and Human Services (DHHS) announced that it was changing its guidance with respect to collecting support in these cases and asked state child welfare agencies to implement a policy where the default position is not to refer parents to the child support agency. DHHS changed its position after multiple studies showed that attempting to collect child support for children in foster care frustrates the goal of reunifying families and that the costs of enforcement are larger than the actual amounts collected.

This bill, in recognition of the new DHHS policy, requires DCSS to identify all child support referrals made under the prior policy made prior to January 1, 2023, direct all local child support agencies to rescind the referrals, and direct local child support agencies to seek modifications of the orders when necessary to eliminate any ongoing obligations under such orders, including the cancellation of all arrears owed to the state and any accrued interest. According to the author and sponsors, this will fully align state policy with the federal guidance and ensure greater family financial stability.

This bill is sponsored by the Alliance for Children’s rights and Los Angeles Dependency Lawyers, Inc. and is supported by over two dozen organizations dedicated to equity in child support and protecting families. 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 is intended to provide for the protection and safety of the public and minors falling under its jurisdiction. (Welf. & Inst. Code, §§ 202, 245, 300.2.)
- 2) Provides that a child may become a dependent of the juvenile court and be removed from the custody of their parent or guardian¹ on the basis of enumerated forms of abuse or neglect. (Welf. Inst. Code, § 300(a)-(j).)
- 3) Requires the Department of Social Services (DSS), in consultation with the DCSS, to promulgate regulations by which a county child welfare department shall determine whether to refer a case in which a child is in the dependency system, and specified benefits are being paid in connection with the child’s placement, to the local child support agency in order for the local child support agency to seek child support payments from the parent. (Fam. Code, § 17552.)
- 4) Provides that the regulations in 3) must provide the factors a child county welfare department shall consider in deciding whether to make a referral, including:
 - a) Whether the payment of support by the parent will pose a barrier to the proposed reunification, in that the payment of support will compromise the parent’s ability to meet the requirements of the parent’s reunification plan.
 - b) Whether the payment of support by the parents will pose a barrier to the proposed reunification in that the payment of support will compromise the parent’s current or future ability to meet the financial needs of the child.
 - c) A presumption that the payment of support by the parent is likely to pose a barrier to the proposed reunification. (Fam. Code, § 17552(a).)

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

- 5) Requires a county child welfare department that determines it is not in the child's best interest to refer a case to a local child support agency pursuant to 3) to periodically review the determination and refer the case to the local child support agency if, due to changed circumstances, it is no longer contrary to the child's best interest to refer the case to the local child support agency. (Fam. Code, § 17552(d).)

This bill:

- 1) Requires, on or before January 1, 2025, DCSS to identify all child support referrals made prior to January 1, 2023, for a child in any of the following circumstances:
 - a) The child receives foster care assistance payments under section 11400 of the Welfare and Institutions Code.
 - b) The child receives assistance payments as a voluntary placement under section 11401.1 of the Welfare and Institutions Code.
 - c) The child receives benefits as a minor child placed in the same home as a minor or nonminor dependent under section 11401.4 of the Welfare and Institutions Code.
 - d) The child is under the jurisdiction of the juvenile court as a dependent or ward of the court and a caretaker relative receives payments pursuant to CalWORKS, Kin-GAP, or section 10101 of the Welfare and Institutions Code.
 - e) The child is the subject of a referral through DSS regulations requiring a county child welfare department, when a child is under the jurisdiction of the juvenile court and certain benefits are paid in connection with that child's placement, to refer the case to the local child support agency to seek child support from the child's parent.
- 2) Requires DCSS to:
 - a) Direct local child support agencies to rescind referrals identified pursuant to the findings in 1) and cease enforcement of these child support orders; and
 - b) Direct local child support agencies to seek modification of these orders when necessary to eliminate ongoing obligations, including cancelation of all arrears owed to the state and any accrued interest.
- 3) Requires DCSS to implement 1)-2) on or before June 1, 2024, through means of departmental letters or similar written instructions without taking any further regulatory action. These departmental letters or similar written instructions shall have the same force and effect as regulations.

COMMENTS

1. Author's comment

According to the author:

Despite state and federal guidance encouraging counties to end the practice of billing parents for their child's time in foster care, thousands of families in California are still in crippling debt owed to the state because they were billed this guidance went into effect. Parents carrying the weight of these debts - and the 10% interest these debts accrue - are kept in poverty, increasing the risk of foster care re-entry. Moreover, not only is the vast majority of this debt already deemed uncollectable by county agencies, but the practice of collecting on these "foster care arrears" is cost-ineffective. AB 1324 will forgive foster care debt for parents whose children were previously in out-of-home care. Eliminating arrears for these families aligns child welfare and child support policies with federal guidance and ensures greater family financial stability for our state's most vulnerable families.

2. The shift in federal and state policy regarding the collection of child support from parents with children in foster care to reimburse the state for benefits provided to the children

Child support is generally associated with cases in which parents have divorced or no longer share finances. But federal law also requires, as a condition of funding under certain benefits programs, certain parents whose children are in foster care can be ordered to pay child support to reimburse the state for the benefits provided to the child. Specifically, federal law requires states to have a procedure whereby the state can collect support from the parent undergoing reunification services where appropriate.²

Last year, however, DHHS issued new guidance for states' implementation of the federal requirement that encouraged states to significantly cut down on the number of cases in which a local child support agency pursues support from a parent with a child in foster care.³ The new guidance explains:

Many parent(s) of children who receive [foster care maintenance payments] are living in poverty and are too often required to pay child support to the state to offset the cost of their child placed in foster care.

² 42 U.S.C. § 671(a)(17).

³ See United States Department of Health and Human Services, Administration for Children & Families, Letter re: new question and answer in the Child Welfare Policy Manual (Jul. 29, 2022); United States Department of Health and Human Services, Administration for Children & Families, Children's Bureau, Child Welfare Policy Manual, § 8.4C, Question 5 (new Jun. 8, 2022), available at https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.js?citID=170&utm_. All links in this analysis are current as of June 23, 2023.

This can negatively impact a family that is trying to develop and maintain familial and economic stability to reunify with their child. It is not in the best interest of any family to be pursued for child support when they have already been whipsawed by economic insecurity, family instability, and separation...

We ask that child welfare agencies make the necessary amendments to their systems to effectively implement a policy where the default position is not to refer parents to the child support agency.⁴

The federal Child Welfare Policy Manual also reflects this change in policy:

It is almost never the case that securing an assignment of the rights to child support is in the best interests of a child during the time the child is in title IV-E foster care. Parent(s) are typically required to engage in a variety of efforts and services to be successfully reunified with their child. This may include regular family time, therapy, parenting courses, and/or treatment for a substance use disorder. It's likely that reducing the income of the child's parent(s) could impede their ability to engage in reunification efforts, potentially extending the time the child spends in foster care. Given this, previous policy directing title IV-E agencies to determine "where appropriate" on a case-by-case basis is withdrawn. Consequently, while each title IV-E agency may determine what constitutes "where appropriate", agencies should consider across-the-board policies. These policies may reflect that an assignment of the rights to child support for children in title IV-E foster care is not required except in very rare instances where there will be positive or no adverse effects on the child, or the assignment will not impede successful achievement of the child's permanency plan.⁵

Last year, the Legislature enacted, and the Governor signed, AB 1686 (Bryan, Ch. 755, Stats. 2022) to implement the new federal policy moving forward. AB 1686 requires a county child welfare agency, when determining whether to refer a case to a local child support agency to seek child support for a child in the foster system, to presume that the payment of support by a parent is likely to impose a barrier to reunification.⁶ This presumption against seeking support is consistent with the federal guidance that seeking child support from parents of children in the foster system "should not be required except in very rare circumstances."⁷

⁴ United States Department of Health and Human Services, Administration for Children & Families, Letter re: new question and answer in the Child Welfare Policy Manual, *supra*.

⁵ United States Department of Health and Human Services, Administration for Children & Families, Children's Bureau, Child Welfare Policy Manual, § 8.4C, Question 5, *supra*.

⁶ AB 1686 (Bryan, Ch. 755, Stats. 2022); Fam. Code, § 17552(a)(2).

⁷ Child Welfare Policy Manual, § 8.4C, Question 5, *supra*.

3. This bill requires DCSS to eliminate existing child support obligations for parents who have, or had, children in foster care

This bill conforms the state's new approach with respect to child support orders for children in foster care that were entered prior to the effective date of AB 1686. The bill requires DCSS, on or before January 1, 2025, to identify all child support referrals made for parents with children in foster care, as specified, and to direct local child support agencies to rescind the referrals and cease enforcement of the orders. The local child support agency must seek to modify orders as necessary to eliminate the ongoing obligations, and all arrears and accrued interest owed to the state must be canceled.⁸ The bill also charges DCSS with implementing the bill's requirements through departmental letters or other similar written instructions.

According to the Alliance for Children's Rights, one of the sponsors of the bill:

Thousands of families in California who were sent a bill for their child's stay in foster care prior to AB 1686 will continue to be burdened. According to a California-based study, in 2018, almost 40,000 parents were in debt on those overdue bills. Because of their low income, many parents do not have the ability to pay. Parents in arrears on these debts may have their driver's or business license suspended, their passport taken, their wages garnished, and disability or Veterans benefits withheld. Parents eligible for an Earned Income Tax Credit – designed to support the wellbeing of low-income families and children – see these tax credits intercepted. Moreover, referrals to credit reporting bureaus have significant effects on these parents' capacity to rent an apartment, secure a car loan, set up utilities for gas or water, or get a job. Parents carrying the weight of these debts are kept in poverty, increasing the risk of foster care re-entry. Meanwhile, counties will continue to recoup very little of the debt owed.

AB 1324 offers a simple solution: cancel foster care-related debts for parents whose children were previously in out-of-home care. Eliminating these arrears would fully align state policy with federal guidance and ensure greater family financial stability.

⁸ The Bradley Amendment, which prohibits a retroactive modification of a child support obligation (*see* 42 U.S.C. § 666(a)(9)) does not prevent a state from agreeing to compromise or settle a debt owed to the state, "on the same grounds as exist for any other judgment in the State." (United States Department of Health and Human Services, Administration for Children & Families, Office of Child Support Services, Policy Supporting Two Parent Families/Compromise of Arrearages, PIQ-99-03 (Mar. 22, 1999), *available at* <https://www.acf.hhs.gov/css/policy-guidance/policy-supporting-two-parent-families/compromise-arrearages>. There is therefore no federal bar to the State agreeing to eliminate outstanding child support amounts owed to the State.

SUPPORT

Alliance for Children’s Rights (co-sponsor)
Los Angeles Dependency Lawyers, Inc. (co-sponsor)
Alliance for Boys and Men of Color
Both Sides of the Conversation
California Alliance of Caregivers
California Dependency Attorneys for Parents
California Families Rise
Children’s Institute
Coalition of California Welfare Rights Organizations
East Bay Children’s Law Offices
Good+ Foundation
GRACE - End Child Poverty in California
Growing Greatness Now
Homeboy Industries
Legal Link
Legal Services for Prisoners with Children
Los Angeles Dependency Lawyers, Inc.
Parent Voices
Public Counsel
Root & Rebound
Rubicon Programs
San Bernardino Fatherhood
San Francisco Foundation
Sister Warriors Freedom Coalition
The Maven Collaborative
The San Francisco Financial Justice Project
Western Center on Law and Poverty
Young Community Developers
Youth ALIVE!

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 618 (Rubio, 2023) prohibits the Department of Child Support Services or a local child support agency from collecting interest that has accrued on child support owed or assigned to the state or the county, and prohibits child support owed or assigned to the state or the county from accruing interest. SB 618 is pending before the Senate Appropriations Committee.

Prior Legislation:

AB 1686 (Bryan, Ch. 755, Stats. 2022) added the presumption that requiring a parent to make support payments for a child in the dependency system is not in the best interest of the child and required DSS to revise its regulations accordingly by October 1, 2023.

AB 1092 (Jones-Sawyer, 2019) would have eliminated interest on child support arrears assigned to the state or county and would have limited the state's ability to collect on all arrearages. The Governor stated in his veto message that, while he "appreciate[d] the author's concern that charging interest on past due child support arrears can lead to uncollectable debt and make it harder for families to escape poverty," he could not support the bill because "it would lead to an estimated revenue loss of millions of dollars outside the budget process."

PRIOR VOTES:

Assembly Floor (Ayes 62, Noes 13)
Assembly Appropriations Committee (Ayes 12, Noes 3)
Assembly Human Services Committee (Ayes 5, Noes 1)
Assembly Judiciary Committee (Ayes 8, Noes 2)
