

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1686 (Bryan)
Version: January 31, 2022
Hearing Date: June 21, 2022
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Child welfare agencies: enforcement

DIGEST

This bill establishes a presumption that, when a child is in foster care, requiring the parent or guardian to pay child support for the child is likely to impose a barrier to the family's efforts to reunify.

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.

Separate from California's goals of reuniting families wherever possible, federal law requires child welfare agencies, where appropriate, to refer the parents of the child in foster care to the state's child support program if the child is entitled to certain federal benefits. Failure to have such a procedure for child support referrals for parents undergoing reunification services will result in the loss of federal funds, though states are given significant discretion to decide when to refer parents in the child welfare system for child support enforcement based on the best interest of the child. Unfortunately, a referral to child support enforcement is neither effective for family reunification nor cost-effective to the state. An order of child support generally delays reunification, leaving a child in foster care for a longer period of time. On the financial end, any money collected would not go to support the child or family, but to recoup the child welfare expenses; but even this is a hypothetical gain, because the state's cost to collect these payments far exceeds the actual payments collected. The federal Children's Bureau, which oversees the federal portion of this regime, recently recognized that an

assignment of child support is almost never in the best interest of the child in foster care.

This bill is intended to further the goals of family reunification and by creating a presumption that payment of child support on behalf of a dependent child for whom reunification services with the parents are available is likely to pose a barrier to reunification. The presumption is rebuttable, so that the child welfare agency can still refer the case to a child support agency where appropriate, thereby ensuring compliance federal law. Moving to a rebuttable presumption will, however, make it more likely that only appropriate cases where child support enforcement will not pose a barrier to reunification are referred.

This bill is sponsored by the Alliance for Children's Rights and the County Welfare Director Association of California and is supported by A Home Within, California Alliance of Caregivers, California Youth Connection, John Burton Advocates for Youth, Los Angeles Dependency Lawyers, Inc., the National Association of Social Workers – California Chapter, Public Counsel, and The San Francisco Financial Justice Project. There is no known opposition. If this bill is passed by this Committee, it will be heard by the Senate Human Services Committee.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Requires, for a state to be eligible for certain federal funding, the state to have a federally approved plan that includes a provision that, where appropriate, all steps will be taken, including cooperative efforts within the State agencies administering the federally funded program, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments, as specified. (42 U.S.C. § 671(a)(17).)

Existing state law:

- 1) Establishes that the purpose of the juvenile court dependency system is maximum safety and protection for children who are currently being abused, neglected, or exploited, and that the focus is on the preservation of the family, as well as the safety, protection, and physical and emotional well-being of the child. (Welf. & Inst. Code, § 300.2.)
- 2) Provides, if at the initial hearing the juvenile court orders a child removed from their parent or guardian¹ due to abuse or neglect, the court shall order that child welfare

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

reunification services be provided to the family as soon as possible in order to reunify the child with their family, if appropriate. (Welf. & Inst. Code, § 319(e).)

- 3) Requires the court, at the dispositional hearing, to order a social worker to provide child welfare services to a child who has been removed from their parents' custody and to the parents in order to support the goal of reunification, for a specified time period, except under certain circumstances; children and families in the child welfare system should typically receive a full six months of reunification services if the child is under three years of age, and twelve months if the child is over three years of age, but the services may be extended to up to 18 or 24 months, as provided. (Welf. & Inst. Code, § 361.5 (a).)
- 4) Provides that reunification services under 3) need not be provided if the court finds, by clear and convincing evidence, that specified conditions exist, generally relating to circumstances in which reunification would be dangerous for the child; in certain specified circumstances, the court may not order reunification services unless it finds by clear and convincing evidence that reunification is in the best interest of the child. (Welf. & Inst. Code, § 361.5(b), (c).)
- 5) Requires CDSS, in consultation with the Department of Child Support Services (DCSS), to establish regulations for the compromise of child support arrearages owed as reimbursement for public assistance when the child is returned to the custody of the obligor when (a) the child was adjudged a dependent of the juvenile court but was subsequently reunited with the obligor pursuant to an order of the juvenile court, or (b) the child was placed with a guardian or relative caregiver who received public assistance for the child and the child was subsequently returned to the home of the obligor. (Fam. Code, § 17550.)
- 6) Requires CDSS, in consultation with DCSS, to establish regulations by which a county welfare department can determine if it is contrary to the best interests of a child to refer their child welfare case to the local child services agency for child support services when the child's foster placement results in foster care assistance or other social services payments, as specified. (Fam. Code, § 17552(a).)
- 7) Provides that, if reunification services are not offered or are terminated in a case under 6), the case may be referred to the local child support agency unless the child's permanent plan is legal guardianship with a relative who is receiving Kin-GAP and the payment of support by the parent may compromise the placement with the guardian, or the permanent plan is transitional foster care for a nonminor dependent. (Fam. Code, § 17552(a).)
- 8) Provides that the regulations established under 6) shall provide the factors the county child welfare department must consider in deciding whether to refer the case to the local child support agency for child support services, 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 parent 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. (Fam. Code, § 17552(a)(1), (2).)

This bill:

- 1) Makes the following Legislative findings and declarations:
 - a) In reunification cases, attempts to collect child support are both cost ineffective and have been proven to harm reunification efforts and destabilize families.
 - b) The basic purpose of the child welfare system is to strengthen families and return children to safe and stable homes. Efforts made by counties to require parents to pay out-of-home care costs for children they are seeking to reunite with their families are inconsistent with that basic purpose.
 - c) It is the intent of the Legislature to limit the referral of these out-of-home cases to county child support enforcement departments.
- 2) Provides that regulations required to be developed by CDSS, in consultation with DCSS, regarding whether it is in the best interest of a child who has been removed from their parents through the child welfare system to have the case referred to the child welfare agency for child support services must provide that the county child welfare department, in making its best interest determination, presume that the payment of support by the parent is likely to pose a barrier to the proposed reunification if reunification services are offered and not terminated
- 3) Requires CDSS to revise its regulations to implement the changes set forth in 2) on or before October 1, 2023.

COMMENTS

1. Author's comment

According to the author:

In many places in California parents are charged for the time their children spend in foster care. This debt is a real and significant barrier to the goal of family reunification. It disproportionately burdens single women of color, and studies have shown that the cost of collections exceeds the debt owed. It's time to end this ineffective and inefficient practice statewide, as several counties have already done. That is why on a state-wide level AB 1686 directs Child Welfare

agencies to prioritize family reunification over the practice of burdening parents and guardians with unnecessary debt.

2. Background on child support payments for a child in foster care

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. Specifically, federal law requires states to have a procedure whereby the state can collect support from the parent undergoing reunification services where appropriate.²

California has fulfilled the federal requirement by requiring CDSS, in consultation with DCSS, to establish regulations by which the county welfare department can determine if it is contrary to the best interest of the child to refer the child welfare case to the local child services agency for child support services.³ The regulations must include factors for the county child welfare department to consider, including:

- 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; and
- 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 current or future ability to meet the financial needs of the child.⁴

The regulations propounded pursuant to this section provide that, in the required individual case evaluation, the child welfare agency must consider:

[T]he best interests of the child and the circumstances of the family, which may include, but not necessarily be limited to, employment status of the parent(s), housing status, impact on other children who may be at risk of removal, availability of community-based services, efforts to reunify, whether parental rights have been terminated, and connection with CalWORKs or other public assistance programs.⁵

The regulations provide further factors for the social worker to consider when the child's case plan goal is reunification with the parent, including the parent's ability to meet the requirements of the reunification plan and the parent's ability to meet the current or future financial needs of the child if the case is referred to the local child

² 42 U.S.C. § 671(a)(17).

³ Fam. Code, 17552(a).

⁴ *Id.*, § 17552(a)(1), (2).

⁵ CDSS Manual of Policies and Procedures, Child Welfare Services Program Special Requirements, 31-503.11 (eff. Jul. 1, 2016).

support agency.⁶ Current law also permits a case to be referred to the local child support agency where reunification services are not offered or are terminated unless the child's permanent plan is legal guardianship with a relative who is receiving Kin-GAP and the payment of support by the parent may compromise the stability of the placement, or the permanent plan is transitional foster care for the nonminor.⁷ Taken together, these provisions are all designed to help ensure that enforcement of child support against the parents does not compromise a family's reunification – whether with a minor or nonminor child – or placement with another family member.

The federal Children's Bureau has recently recognized that this approach is less than effective in helping reunite families.

The problem is, research shows that a referral to child support enforcement makes reuniting the parent with the child much harder and delays the child's return to their family.⁸ Moreover, perhaps unsurprisingly, child support obligations for families with children in the foster system fall disproportionately on low-income households. The Legislative Analysis's Office recently found that

[F]amilies involved with child protective services are disproportionately poor and overrepresented by certain racial groups, and are often single-parent households living in low-income neighborhoods. In California, Black and Native American youth in particular are overrepresented in the foster care system relative to their respective shares of the state's youth population.⁹

On top of these negative policy outcomes, child support paid by a parent undergoing the reunification process does not go to the child in foster care or the child's foster family. Instead, the payments go to the government – to help recoup the state and federal government's child welfare expenses.¹⁰ Yet even assuming this was a worthwhile reason to extend a child's stay in foster care, it fails on its own terms: for every dollar California spends to collect on child support orders levied against a parent in reunification services, it collects only 27 cents.¹¹

⁶ *Id.*, 31-503.111.

⁷ Fam. Code, § 17550.

⁸ See, e.g., Cacian *et al.*, *Making parents pay: The unintended consequences of charging parents for foster care*, 72 Children and Youth Services Rev. 100, 108 (2017).

⁹ Legislative Analysis's Office, [The 2022-23 Budget: Analysis of Child Welfare Proposals and Program Implementation Updates](#) (Feb. 2022), p. 3.

¹⁰ Orange County Department of Child Support Services, *Child Support and Foster Care in California*, at p. 5. Moreover, the payments that go to the state do not meaningfully reimburse the federal government for foster care maintenance payment: the federal government recoups about four cents for every dollar in foster care maintenance paid. (*Id.* at p. 7.)

¹¹ *Id.* at p. 6.

The federal Children’s Bureau (Bureau) has recently recognized the shortcomings of this program. On June 8, 2022, it deleted its prior guidance recommending that the appropriateness of a child support assignment be determined on a case-by-case basis, recognizing that

[s]ecuring an assignment of the rights to child support is generally deemed not to be cost effective as analyses have shown that very low levels of collection are obtained, particularly in comparison to the costs for administering child support for children in title IV-E foster care [citations]. On addition, children receiving title IV-E [benefits] have been removed from households where they would have qualified for Aid to Families for Dependent Children (AFDC) under a state’s July 16, 1996, standard of need. This means that the parent(s) of these children are likely to be living in poverty. It is almost never the case that securing an assignment of the rights to child support is in the best interest of a child during the time the child is in title IV-E foster care.¹²

In light of all of the above, the Bureau’s new guidance recommends that state agencies should consider across-the-board policies that “an assignment of rights to child support for children in title IV-E foster care except in very rare instances where there will be positive or no adverse effects on the child, or the assignment will not impede successful instances where there will be positive or no adverse effects on the child.”¹³

3. This bill creates a presumption that child support enforcement will pose a barrier to family reunification

This bill aligns neatly with the Bureau’s new policy recommendation regarding child support for children in foster care. In order to address the problems of trying to collect child support from families seeking to reunify with their children in the child welfare system, this bill requires that, when making a determination about whether to refer a parent for child support enforcement, the child welfare department must presume that the payment of support by the parent is likely to pose a barrier to the proposed reunification if reunification services are offered and not terminated. This ensures compliance with federal law by requiring that the child welfare department to determine whether a child support assignment is appropriate, but also creates a rebuttable presumption that child support and family reunification are at odds with each other. The state’s revised policy for determining when to send a case to child

¹² 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?p:citID=170&utm (last visited Jun. 10, 2022).

¹³ *Ibid.*

support enforcement and its compliance with federal law is further supported by the bill's legislative findings, which state:

- In reunification cases, attempts to collect child support are both cost ineffective and have been proven to harm reunification efforts and destabilize families.
- The basic purpose of the child welfare system is to strengthen families and return children to safe and stable homes. Efforts made by counties to require parents to pay out-of-home care costs for children they are seeking to reunify with their families are inconsistent with that basic purpose.
- It is the intent of the Legislature to limit the referral of these out-of-home cases to county child support enforcement departments.

To give CDSS time to implement new regulations reflecting this presumption, the bill requires that CDSS revise its regulations by October 1, 2023. This provides DSS enough time to revise its regulations, but ensures that it is done quickly to prevent the unwarranted and counterproductive referral for child support enforcement of many child welfare families actively working toward reunification with their children.

4. Arguments in support

According to the Alliance for Children's Rights, a co-sponsor of the bill:

Every year, more than 14,000 parents whose children have been removed to foster care are required to repay the cost of their child's stay in care. Although federal law requires states to establish a process by which child welfare agencies can refer parents for repayment of foster care costs, the law allows for significant discretion. In the overwhelming number of cases, this discretion should lean against recoupment of costs, because these financial burdens place a heavy toll on families. Research shows that for every \$100 child welfare-involved parents pay towards foster care costs, their child's duration in care lengthens for 6.6 months. If the costs go unpaid, there can be significant collateral consequences, including garnished wages or inability to sign a lease due to a negative credit score. The effects are especially pronounced for Black families, who are dramatically over-represented in California's child welfare system.

In our experience, recouping foster care costs can also destabilize placements. The Alliance often receives questions from kin caregivers who are concerned that their receipt of foster care benefits will lead to debt burden for the parent....

AB 1686 removes a key barrier to reunification by clarifying the circumstances in which child welfare agencies should refer parents for repayment of foster care costs. Specifically, the bill requires counties to presume, when the family has a plan of reunification, that recoupment of costs will likely prevent family reunification. In practice, this will increase the likelihood that child welfare

agencies will decline to seek repayment from parents, disrupting the well-established negative impacts of this practice.

SUPPORT

Alliance for Children's Rights (co-sponsor)
California Welfare Director's Association of California (co-sponsor)
A Home Within
California Alliance of Caregivers
California Youth Connection
John Burton Advocates for Youth
Los Angeles Dependency Lawyers, Inc.
National Association of Social Workers - California Chapter
Public Counsel
The San Francisco Financial Justice Project

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 79 (Committee on Budget, Ch. 11, Stats. 2020) among other things, increased the amount of monthly child support passed through to CalWORKs recipients from \$50 per family to \$100 for a family with one child or \$200 for a family with two or more children.

SB 380 (Bradford, Ch. 729, Stats. 2017) allowed, in certain instances, a CalWORKs assistance unit to receive the full child support payments for a stepsibling or half-sibling in that unit, and prohibited those child support payments from impacting CalWORKs eligibility or benefit level determination.

AB 1654 (Bonilla, 2014) would have increased the amount of monthly child support passed through to CalWORKs recipients from \$50 per family to \$100 for a family with one child or \$200 for a family with two or more children. AB 1654 was held on the Senate Appropriations suspense file.

PRIOR VOTES:

Assembly Floor (Ayes 58, Noes 14)

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Assembly Appropriations Committee (Ayes 12, Noes 4)

Assembly Human Services Committee (Ayes 6, Noes 1)

Assembly Judiciary Committee (Ayes 7, Noes 3)
