

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

AB 841 (Cunningham)  
Version: March 23, 2021  
Hearing Date: June 8, 2021  
Fiscal: No  
Urgency: No  
JT

**SUBJECT**

Dependant children

**DIGEST**

This bill provides that a parent's failure to seek custody is not itself a sufficient basis for bringing the child into the foster care system.

**EXECUTIVE SUMMARY**

The child welfare system is intended to achieve a delicate balance of values, including "protecting children from harm, preserving family ties, and avoiding unnecessary intrusion into family life." (*In re R.T.* (2017) 3 Cal.5th 622, 638.) Welfare and Institutions Code section 300(b) provides that a child may be brought into the system if the child is subjected to serious physical harm or a substantial risk thereof by a parent's failure or inability to properly provide for the child. According to proponents of this bill, some county child welfare agencies have asserted that this provision applies when a parent has not initiated legal action against the other parent to obtain legal custody of the child. Proponents argue that this disproportionately harms low-income families that lack the resources or ability to navigate the family court system.

This bill would provide that a child does not fall under section 300(b) solely due to the failure of the child's parent or alleged parent to seek court orders for custody of the child. The bill is sponsored by the Children's Advocacy Institute and Dependency Legal Services, and is supported by East Bay Family Defenders, Los Angeles Dependency Lawyers, Public Counsel, and National Association of Social Workers, California Chapter. There is no known opposition. A technical amendment is described on page 5.

## PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that a child may become a dependent of the juvenile court and be removed from their parents or guardian on the basis of enumerated forms of abuse or neglect. (Welf. & Inst. Code § 300.)<sup>1</sup>
- 2) Sets forth the grounds for the assertion of the juvenile court's jurisdiction, including: serious physical harm by a parent or guardian (§ 300(a)); failure to adequately supervise, protect, or provide for the child (*id.* at (b)); serious emotional damage (*id.* at (c)); sexual abuse (*id.* at (d)); severe physical abuse of a young child (*id.* at (e)); causing the death of another child by neglect or abuse (*id.* at (f)); leaving the child without provision for support or voluntarily surrendered (*id.* at (g)); making the child free for adoption without adoption petition (*id.* at (h)); acts of cruelty (*id.* at (i)); and abuse or neglect of a sibling (*id.* at (j)).
- 3) Provides that dependency jurisdiction applies if, among other things, the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness as a result of the failure or inability of their parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate care, as provided. (§ 300(b)(1).) Prohibits a child from being found to have met these criteria solely due to the lack of an emergency shelter for the family. (*Id.*)

This bill provides that a child does not fall under section 300(b) solely due to the failure of the child's parent or alleged parent to seek court orders seeking custody of the child.

## COMMENTS

### 1. Author's statement

The author writes:

AB 841 is intended to keep families together if at all possible. By ensuring uniformity in the evidentiary standard by which the question of whether services were offered, we ensure that every step along the dependency path families are being afforded the best chance to reunite safely, with the twin benefits of keeping a family intact and a child out of foster care. And, by clarifying that a parent's failure to initiate litigation cannot, all by itself,

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

be a ground for abuse and neglect, we likewise remove a way where a family could get unnecessarily entwined with the dependency court system and risk losing their child only because the parent lacks the money or sophistication to file legal actions.

2. A parent's decision not to seek custody does not mean the parent is unfit

The overarching goal of dependency proceedings is to safeguard the welfare of California's children. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 673.) The purpose of a dependency petition is to protect the child from some parental deficiency, not to punish the parent. (See *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) A child may be brought within the juvenile court's jurisdiction as a result of the conduct or omission of either or both parents that results in the child being described by section 300.<sup>2</sup> The jurisdiction is over the child rather than the parents; consequently, there is no requirement that there be jurisdictional allegations regarding conduct by both parents.<sup>3</sup>

Section 300(b) "[b]y its terms ... requires no more than the parent's failure or inability ... to adequately supervise or protect the child. [Citation.]" (*In re R.T., supra*, 3 Cal.5th at 630.) Section 300(b) provides that a child may be brought into the foster care system if the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. However, section 300(b) expressly provides that the child cannot be found to meet these criteria solely due to the lack of an emergency shelter for the family.

This bill would similarly provide that a child does not fall under section 300(b) solely due to the failure of the child's parent or alleged parent to seek court orders seeking custody of the child. Proponents state that some county child welfare agencies have asserted that this provision applies when a parent has not initiated legal action against the other parent to obtain legal custody of the child. In a letter echoed by several other supporters, Public Counsel writes:

Through our practice, we have seen young parents feel forced to obtain inappropriate custody orders in family court after being threatened by a

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<sup>2</sup> *Seiser & Kumli on California Juvenile courts Practice and Procedure* (2019 ed.) § 2.84(1) at 2-291.

<sup>3</sup> *Id.*

county child welfare worker who has told them that they must file in court or risk losing their child. We have also seen that, in some cases, county child welfare agencies will seek to remove a child from the care of a parent solely because the parent does not retain a lawyer or themselves initiate legal action against another parent. We have heard from our partners that parents across the state face similar allegations when they chose, sometimes on the advice of counsel specializing in family court matters, not to file a custody matter.

The bill's co-sponsors, the Children's Advocacy Institute and Dependency Legal Services, jointly describe an illustrative case in which the sole allegation against the parent was that a father did not seek appropriate family court orders to obtain custody of the children to prevent the mother from taking the children to another state where they were exposed to unsafe circumstances, including that the mother was using illicit drugs and had mental health issues. The allegation did not state that the father had actual knowledge of those circumstances; rather, it asserted that he knew or reasonably should have known these facts.

Proponents argue that this practice disproportionately harms low-income families that lack the resources or ability to navigate the family court system. Several supporters write:

A parent is not unfit because they are not litigious, lacking the resources, or capability to seek legal redress in family court. Such allegations of abuse or neglect abused solely on a parent's obtaining family law orders penalize and seek to rupture families unnecessarily. They discriminate against parents who do not have the financial means to hire counsel or the ability to navigate our complicated court system. In addition, they sometimes force parents who are lucky enough to be represented by counsel to choose between pleasing the county and the best strategic action in pending family court matter.

Inspired by current law's treatment of lack of emergency shelter, which also cannot itself justify removing a child from the care of a parent, AB 841 narrowly addresses this problem by saying such allegations alone cannot serve as the basis of county welfare action. [...]

In this regard, the Fourth District Court of Appeal has stated:

But poverty alone, even abject poverty resulting in homelessness, is not a valid basis for assertion of juvenile court jurisdiction. As the Legislature expressly stated in section 300, subdivision (b), "no child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. ..." Put differently, indigency, by itself,

does not make one an unfit parent and “judges [and] social workers ... have an obligation to guard against the influence of class and life style biases.” [Citation.]

(*In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1212.)

Ultimately, “[t]he goal of dependency court proceedings is not to engineer perfect parents, but to protect children from harm.” (*In re J.M.* (2020) 50 Cal.App.5th 833, 848.) There are valid reasons that a parent may decline to resort to the legal system to obtain formal custody, and this decision is not itself harmful to the child. Supporters note, however, that an allegation regarding a parent’s failure to seek custody “would still be permitted in addition to other allegations, as part of an overall neglectful picture.”

#### Amendment

The author has agreed to the following technical amendment to the language the bill adds to section 300(b)(1):

A child shall not be found to be a person described by this subdivision solely due to the failure of the child’s parent or alleged parent to seek court orders ~~seeking~~ *for* custody of the child.

#### SUPPORT

Children’s Advocacy Institute (co-sponsor)  
Dependency Legal Services (co-sponsor)  
East Bay Family Defenders  
Los Angeles Dependency Lawyers  
National Association of Social Workers, California Chapter  
Public Counsel

#### OPPOSITION

None known

#### RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.

**PRIOR VOTES:**

Assembly Floor (Ayes 78, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)

Assembly Human Services Committee (Ayes 8, Noes 0)

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