

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

AB 954 (Bryan)  
Version: June 12, 2023  
Hearing Date: June 20, 2023  
Fiscal: No  
Urgency: No  
AWM

**SUBJECT**

Dependency: court-ordered services

**DIGEST**

This bill requires a juvenile court to inquire whether a parent or guardian can afford court-ordered services when making reasonable orders relating to a dependent child, and prohibits a court from declaring a parent or guardian noncompliant with the order if it finds that the parent or guardian could not afford the services, or that paying for the service would create an undue financial hardship, and the social worker did not provide a comparable free service that was accessible and available.

**EXECUTIVE SUMMARY**

Children who are at risk of abuse, neglect, or abandonment may be deemed dependents of the juvenile court and provided 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; in some cases, in order to bolster the possibility of reunification, the court will order the parent or guardian to participate in services or programs intended to help them overcome the conditions that led to the child being declared a dependent of the juvenile court. Existing law also states that a child cannot be found to be a dependent child simply because of indigence or other conditions of financial difficulty, including, but not limited to, poverty or the inability to provide or obtain clothing, home or property repair, or childcare. Instead, there must be harm or a substantial risk of harm to the child and a nexus between the parent's action, or failure to act, and the harm to the child. Poverty, by itself, is not a reason to make a child a dependent of the juvenile court.

Current law does not specifically address whether the court needs to inquire about the parent's ability to pay for a court-ordered services or programs. The law also does not clarify whether a parent can be considered to be non-compliant with the court-ordered

case plan when there is evidence that the parent or guardian is unable to pay for a court-ordered service, or when payment for the service would create an undue financial hardship to the parent or guardian.

This bill is intended to fill that gap, by clarifying that a court must inquire about a parent or guardian's ability to pay for court-ordered programs or services in the first instance, and that a court may not, at review hearings, deem a parent noncompliant with the case plan if the parent failed to participate in services and programs that they could not afford or would cause an undue financial hardship. The bill also establishes that a parent is presumed to be unable to pay for a court-ordered service if they qualify for the services of a court-appointed attorney on financial grounds. Recent amendments to the bill clarify that a parent or guardian may be deemed noncompliant if the social worker provided a parent or guardian with a comparable free service that was accessible and available to them and they nevertheless failed to participate. The author has agreed to a minor amendment to clarify the reference to court-appointed counsel.

This bill is sponsored by Los Angeles Dependency Lawyers, Inc., and is supported by A New Way of Life Reentry Project, the Alliance for Children's Rights, the National Association of Social Workers – California Chapter, Public Counsel, and the Seneca Family of Agencies. 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.)
- 2) Provides that a child may become a dependent of the juvenile court and be removed from the custody of their parent or guardian<sup>1</sup> on the basis of enumerated forms of abuse or neglect. (Welf. Inst. Code, § 300(a)-(j).)
- 3) 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 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.)

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<sup>1</sup> Going forward, this analysis uses "parent" to include "guardian."

- 4) Requires, following the removal of a child from their parent's custody, the juvenile court to hold an initial hearing at which the court determines whether custody may be resumed or what services should be offered to the parent that could facilitate the child's return in the future.
  - a) The court must make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from their home, and whether there are available services that would prevent the need for further detention.
  - b) In determining whether to return a child to the parent's custody at this stage, the fact that the parent is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with their parent shall not be, for that reason alone, prima facie evidence of substantial danger. (Welf. & Inst. Code, §§ 311, 319.)
- 5) Permits, in lieu of keeping a child out of their parent's custody, a child to remain in the physical custody of their parent while still a dependent of the juvenile court and under the supervision of a social worker. If the court determines that the child can be returned to their parent's custody through the provision of remedial services and rehabilitation programs, the court shall order those services or programs to be provided. (Welf. & Inst. Code, § 319.)
- 6) Authorizes a court, where a child has been adjudged a dependent of the court, to make any reasonable orders to the child's parent directing them to participate in services or programs, such as child welfare services, counseling, parenting programs, or a financial evaluation. (Welf. & Inst. Code, § 362.)
- 7) Provides that, when a child has determined to be a dependent of the juvenile court, the court must hold periodic review hearings no less frequently than six months, starting six months after the initial dispositional hearing.
  - a) For children three years of age and older and out of their parent's custody, the court must return the child to their parent's custody unless it 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.
  - b) If the child was under three years of age at the date of removal is a member of a sibling group as specified, and the court determines the parent has not been participating and making progress in a court-ordered treatment plan, the court may schedule a permanency hearing within 120 days. (Welf. & Inst. Code, § 366, 366.21(e).)
  - c) If a child is a dependent of the juvenile court but remains in their parent's custody, the court must hold six-months hearings to determine whether the family has made progress in eliminating the conditions or factors requiring court supervision. (Welf. & Inst. Code, § 364.)

- 8) Provides that, for a child who remains out of their parent's custody after the hearing in 7), the court may hold a permanency hearing no later than 12 months after the initial removal; the court may also continue the permanency hearing for up to two more six-month periods, so that the permanency hearing may be held, at a maximum, 24 months after the child was initially removed. (Welf. & Inst. Code, §§ 366.21(f), (g), 366.22, 366.25.)
- 9) Requires a court, at review and permanency hearings, to consider a parent's efforts or progress in overcoming the factors that led to dependency jurisdiction, including whether and to what extent the parent availed themselves of services provided. (Welf. & Inst. Code, §§ 364, 366.21, 366.22, 366.25.)

This bill:

- 1) Requires a juvenile court, when ordering a parent to participate in services or programs to eliminate the conditions that led to the juvenile court's jurisdiction, to inquire whether the parent can afford the court-ordered services or programs.
- 2) Provides that, at a hearing where a parent's participation in court-ordered services or programs is at issue (e.g., a reunification hearing or parental rights termination hearing), a juvenile court shall not deem a parent noncompliant with the order to seek services or programs if the court finds that:
  - a) The parent is unable to pay for a service or payment for a service would create an undue financial hardship for the parent, and
  - b) The social worker did not provide a comparable free service that was accessible and available to the parent to comply with the case plan during the period subject to the court's review.
- 3) Establishes that a parent who qualifies for the services of court-appointed counsel in the juvenile court is presumed to be unable to pay the cost of court-ordered services for purposes of the court's review under 2).

## COMMENTS

### 1. Author's comment

According to the author:

Today, families are being separated or kept separated based solely on the parent's inability to pay for court-ordered services – even if the parent is complying with all other aspects of their case plan. This practice punishes poor families, the majority of whom are Black or Brown. Delayed reunification traumatizes children, increases costs of foster care and supervision, and adds further financial and emotional stress on families. This bill will ensure that a

parent's inability to pay for court-ordered services is not a barrier to reunifying with their children and will no longer unnecessarily extend the time children remain away from their families.

## 2. Background on the child welfare process and the effect of a parent's failure to participate in court-ordered services or programs

The overarching goal of dependency proceedings is to safeguard the welfare of California's children.<sup>2</sup> Welfare and Institutions Code section 300 sets forth the circumstances that can bring a child within the jurisdiction of the juvenile dependency court. " '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.' "<sup>3</sup>

When a child is found to be under the jurisdiction of the juvenile court, the court is determined to be a dependent of that court and the court may begin proceedings to remove the child from the custody of their parent(s); if, after a series of hearings, a parent is found to be unfit, the court can terminate the parent's parental rights.<sup>4</sup> The overarching inquiry is whether the child would suffer, or is likely to suffer, harm if they remain with their parent. Alternatively, a court may return a child to their parent's custody but retain jurisdiction and place the parent under the supervision of a social worker; in such cases, the court holds hearings at six-month intervals to determine whether the parent has improved enough to terminate jurisdiction, but may remove the child from their parent's custody if circumstances deteriorate.<sup>5</sup>

In both circumstances – when a child is a dependent of the juvenile court in their parent's custody or out of it – the juvenile court is authorized to make any reasonable orders to the child's parent directing them to participate in services or programs that may help the parent improve the circumstances that led to juvenile court jurisdiction.<sup>6</sup> Court-ordered services and programs can include an array of subject matters, including child welfare services, counseling, parenting programs, or financial evaluations.<sup>7</sup> A parent's failure to participate, or make progress, in the court-ordered services and programs will be considered by the court in its review hearings determining whether to return or remove a child from their parent's custody or to terminate parental rights.<sup>8</sup>

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<sup>2</sup> *In re Josiah Z.* (2005) 36 Cal.4th 664, 673.

<sup>3</sup> *In re R.T.*, 3 Cal.5th 622, 626.

<sup>4</sup> See *Welf. & Inst. Code*, §§ 360, 361.3, 366.26.

<sup>5</sup> *Id.*, §§ 319, 364.

<sup>6</sup> *Id.*, § 362.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Id.*, §§ 364, 366.21, 366.22, 366.25.

Unfortunately, as the author and sponsors report, parents are not always able to participate in the court-ordered services due to cost barriers. Current law does not require the court, as part of its order for a parent to participate in programs or services, to determine if the parent can actually afford those programs or services. As the Alliance for Children's Rights, writing in support, explains:

The overwhelming majority of parents in this system are indigent, without access to reliable transportation, and without funds to pay for court-ordered services. Yet, the Welfare and Institutions Code does not have safeguards to ensure that these families are able to participate in services without footing the bill.

In Los Angeles County, for instance, parents must pay for their court-ordered programs, even if they do not have the financial means to afford the services ordered. While health insurance covers some services, many parents are uninsured, and even for those who are, classes still require exorbitant out-of-pocket fees. Inability to pay limits a parent's ability to follow the court's order and get into a class that does not interfere with their work, school and childcare or visitation. Delayed reunification traumatizes children, increases the cost of foster care and supervision, and adds further financial and emotional stress on families.

3. This bill prohibits a court from determining that a parent was noncompliant with a court order to obtain services or participate in programs if there were no affordable services or programs available to the parent

This bill is another entry in a series of bills intended to prevent the dependency system from penalizing parents for their economic conditions and conflating poverty with neglect.<sup>9</sup> Specifically, this bill requires a juvenile court to inquire about a parent's financial circumstances when ordering that a parent participate in services or programs as part of a dependency case plan, and then prohibits a court from deeming a parent noncompliant if the parent could not, without creating financial hardship, afford the ordered classes and services.

Recent amendments to the bill, in response to stakeholder concerns, make clear that a parent can be deemed noncompliant if the social worker provided the parent with a comparable, available free service and the parent failed to take advantage of the free service. This will allow the court to distinguish between parents who are truly noncompliant and those for whom compliance was not feasible. Finally, the bill creates a presumption that a parent who qualifies for the services of a court-appointed attorney in the juvenile court proceedings due to their inability to pay for a private attorney also cannot afford to pay for a fee-based family maintenance or reunification service. The

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<sup>9</sup> See the "Prior legislation" section of this analysis.

author has agreed to amend the bill to replace the reference to “the services of the public defender” with “the services of court-appointed counsel” to conform the bill more precisely with the provision for court-appointed counsel in dependency cases.

### **SUPPORT**

Los Angeles Dependency Lawyers, Inc. (sponsor)  
A New Way of Life Reentry Project  
Alliance for Children’s Rights  
National Association of Social Workers – California Chapter  
Public Counsel  
Seneca Family of Agencies

### **OPPOSITION**

None known

### **RELATED LEGISLATION**

#### **Pending Legislation:**

SB 578 (Ashby, 2023) requires a social worker to report on, and a juvenile court to consider, the potential harms to a child when considering whether to remove a child from their parent or guardian’s custody. SB 578 is pending before the Assembly Judiciary Committee and is set to be heard on the same date as this bill.

SB 463 (Wahab, 2023) eliminates the evidentiary presumption in juvenile court that a parent or guardian’s lack of participation or progress in a treatment program endangers the child, for purposes of determining whether the child should be returned to the parent or guardian’s custody. SB 463 is pending before the Assembly Human Services Committee.

AB 937 (McKinnor, 2023) clarifies that the court must specify its factual basis for its conclusion that reasonable services have not been provided to the parent or guardian if the court extends reunification services on that basis. The bill also requires the court to extend reunification services for an additional 6 months if the court determines at the 18-month permanency hearing that reasonable services have not been provided. The bill is pending before this Committee.

#### **Prior Legislation:**

SB 1085 (Kamlager, Ch. 832, Stats. 2022) prohibited a child from being found to be within the jurisdiction of the juvenile court on that basis solely due to indigence or other conditions of financial difficulty.

AB 2866 (Cunningham, Ch. 165, Stats. 2022) modified the standard of proof for establishing at a review hearing that a parent or guardian whose child has been removed from their physical custody was offered reasonable reunification services, by raising the standard to the clear and convincing evidence standard, in order to make the standard of proof consistent with the clear and convincing evidence standard already in place for permanent placement hearings.

**PRIOR VOTES:**

Assembly Floor (Ayes 63, Noes 2)  
Assembly Human Services Committee (Ayes 5, Noes 0)  
Assembly Judiciary Committee (Ayes 8, Noes 0)

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