

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

SB 1085 (Kamlager)
Version: April 25, 2022
Hearing Date: May 3, 2022
Fiscal: No
Urgency: No
AWM

SUBJECT

Juveniles: dependency: jurisdiction of the juvenile court

DIGEST

This bill provides that a parent or guardian's condition of financial difficulty, including, but not limited to, poverty, homelessness, lack of access to medical care or resources, or the inability to afford food, clothing, home or property repair, or childcare, 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) (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 willful or negligent failure to properly provide for the child. The language of the statute is written to describe a parent who culpably fails to provide for a child's food, clothing, shelter, or medical needs, suggesting that the Legislature did not intend for a parent's poverty alone to serve as a basis for jurisdiction. The author and sponsor report, however, that in practice, some dependency petitions rely solely on such conditions of poverty.

This bill would provide that a child does not fall under section 300(b) solely due to the parent or guardian's conditions of financial difficulty, which includes poverty homelessness, indigence, or the inability to afford clothing, home or property repair, or childcare, as well as lack of access to medical care or resources or the inability to afford food, so long as the child is not experiencing malnourishment or a medical emergency. The bill further provides that the inability to afford food or medical care or resources cannot form the basis of dependency jurisdiction if resources from a community organization could expediently remedy the malnourishment or medical emergency. The

author has agreed to amend the provisions relating to malnourishment or a medical emergency to allow jurisdiction where there is a *risk* of those conditions, which aligns the bill with the existing law granting jurisdiction before a child has experienced severe harm. The author has also agreed to remove the provision eliminating jurisdiction merely because services from a community organizations *could* resolve the issue of malnourishment or a medical emergency, while the author and stakeholders continue the discussion of how to ensure that there is no dependency jurisdiction unless and until available community resources have been exhausted or gone unused.

The bill is sponsored by A New Way of Life Reentry Project and supported by Dependency Legal Services of San Diego, Los Angeles Dependency Lawyers, Inc., the National Association of Social Workers, California Chapter, and the Pacific Juvenile Defender Center. There is no known opposition.

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 their parent or guardian on the basis of enumerated forms of abuse or neglect. (Welf. Inst. Code, § 300(a)-(j).)
- 3) Provides, as one such set of circumstances, that a child becomes a dependent of the juvenile court when the child has suffered, or there is a substantial risk that the child will suffer serious physical harm or illness as a result of:
 - a) The failure or inability of the child's parent or guardian to adequately supervise or protect the child;
 - b) 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;
 - c) The willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment;¹ or
 - d) 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. (Welf. & Inst. Code, § 300(b)(1) & (2).)

¹ The statute specifies that, if a parent's or guardian's failure to provide adequate medical treatment for the child arises from the decision to seek medical treatment through prayer, the court must give deference to the parent's or guardian's decision if it is in accordance with the tenets of a recognized church or religious denomination and shall not assume jurisdiction unless it is necessary to protect the child from suffering serious harm or illness. (§ 300(b)(1).)

- 4) Provides, notwithstanding the factors in 3), that a child does not become a dependent of the juvenile court solely due to:
 - a) The lack of emergency shelter for the family.
 - b) The failure of the child's parent or alleged parent to seek court orders for custody of the child. (Welf. & Inst. Code, § 300(b)(1).)

This bill:

- 1) Adds an exception to when a child comes becomes a dependent of the juvenile court based on the circumstances in 3), providing that a child shall not be within the jurisdiction of the juvenile court solely due to conditions of financial difficulty, including either of the following:
 - a) Poverty, homelessness, indigence, or the inability to afford food, clothing, home or property repair, or childcare.
 - b) Lack of access to medical care or resources, or the inability to afford food, so long as the child is not experiencing malnourishment or a medical emergency. If available resources from a community organization could expediently remedy malnourishment or a medical emergency, the condition shall not be a basis for jurisdiction.
- 2) Makes technical and nonsubstantive conforming changes.

COMMENTS

1. Author's statement

According to the author:

SB 1085 seeks to protect and keep families together by redefining the definition of neglect. When determining child "neglect" in Dependency Court hearings, the overly broad definition can put families at risk. This bill will provide critical protection for California's families vulnerable to separation based on factors such as poverty, homelessness, and a lack of access to basic resources. SB 1085 would prohibit a child from being found to be within the jurisdiction of the juvenile dependency court due to conditions of financial difficulty, including, but not limited to, poverty, homelessness, indigence, lack of access to medical care or resources, or the inability to afford food, clothing, home or property repair, or childcare. Poverty does not signify neglect, and we must outline a definition of neglect in child welfare that supports this idea.

2. The scope of the juvenile dependency court's jurisdiction over children who have suffered, or are at substantial risk of suffering, serious physical harm or illness

The overarching goal of dependency proceedings is to safeguard the welfare of California's children.² "Parents have a fundamental interest in the care, companionship, and custody of their children."³ As such, parents have due process protections in juvenile dependency proceedings.⁴ The purpose of a dependency petition is to protect the child from some parental deficiency, not to punish the parent.⁵

When a child is found to be under the jurisdiction of the juvenile dependency 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.⁶ The fact that a child is found to be under the jurisdiction, and therefore a dependent, of the juvenile dependency court does not automatically result in a child being taken from a parent, but even where the child remains in parental custody, the threat that the child could be taken away remains.

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.' "⁷

Welfare and Institutions Code section 300(b) (section 300(b)) addresses the circumstances under which a child may fall within the jurisdiction of the juvenile dependency court due to a lack of parental supervision, care, or protection that may result in physical harm to the child.⁸ Specifically, section 300(b) establishes dependency jurisdiction over a child when the child has suffered, or is at substantial risk of suffering, serious physical harm or illness as a result of:

- The parent's failure or inability to adequately supervise or protect them;
- The parent's willful or negligent failure to adequately supervise or protect the child from the conduct of a custodian with whom the child has been left;
- The parent's willful or negligent failure to provide the child with adequate food, clothing, shelter, or medical treatment; or

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

³ *In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1210.

⁴ *Santosky v. Kramer* (1982) 455 U.S. 745, 753-754.

⁵ *See In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.

⁶ *See* Welf. & Inst. Code, §§ 360, 361.3, 366.26.

⁷ *In re R.T.*, 3 Cal.5th 622, 626.

⁸ § 300(b). The failure to provide adequate mental health care for a child is addressed in section 300(c), and other subdivisions address more specific circumstances, such as sexual or physical abuse. (*See generally id.*, § 300.)

- The inability of the child’s parent to provide regular care due to the parent’s mental illness, developmental disability, or substance abuse.⁹

Section 300(b) clarifies that a child does not fall within these factors “solely due to the lack of an emergency shelter for the family.”¹⁰ The courts have further held that “poverty alone, even abject poverty resulting in homelessness, is not a valid basis for assertion of juvenile court jurisdiction.”¹¹

The California Supreme Court has noted that section 300(b) set forth different standards for parental culpability for the child’s risk of harm or illness: some of the circumstances require only a parental *failure or inability* to take certain measures, while others require the parent’s *willful or negligent failure* to act.¹² Relying on that distinction, the Court has held that the portions of section 300(b) requiring only parental failure or inability do not require a finding that the parent is at fault or blameworthy in failing to supervise or protect the child, but rather “require[] no more than the parent’s failure or inability... to adequately supervise or protect the child.”¹³ By contrast, the Court has indicated that the provisions requiring willful or negligent conduct do require some form of parental culpability over and above mere inability.¹⁴

3. This bill clarifies that a parent’s or guardian’s conditions of financial difficulty, without more, cannot form the basis for dependency jurisdiction

Under current law, a dependency court may exercise jurisdiction over a child due to the “willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment,” if that failure has caused the child to suffer, or there is a substantial risk that it will cause the child to suffer, serious physical harm or illness.¹⁵ Under the framework established by the California Supreme Court, this provision appears to require some level of parental culpability for the failure, over and above the parent’s mere inability to provide for the child as a result of

⁹ § 300(b).

¹⁰ *Ibid.*

¹¹ *In re G.S.R.*, *supra*, 159 Cal.App.4th at p. 1212.

¹² *See In re R.T.*, 3 Cal.5th 622, 629-630.

¹³ *In re R.T.*, 3 Cal.5th 622, 624. *see also, e.g., In re Ma.V.* (2021) 64 Cal.App.5th 11, 22 (Section 300(c), which makes child a dependent of the juvenile court when the child has suffered, or is at serious risk of suffering, emotional damage and the parent is the cause of the damage or is incapable of providing care, does not require parental fault in failure to provide mental health treatment).

¹⁴ *Id.* at pp. 629-630; *see also, e.g., In re M.T.* (Oct. 20, 2020) 2020 WL 6143197, at p. *4 (nonpub. opn.) (following *In re R.T.* and requiring a finding of neglect or willfulness in determining whether juvenile court had jurisdiction under section 300(b)’s third clause).

¹⁵ *Welf. & Inst. Code*, § 300(b)(1). Going forward, this analysis uses “parent” to refer to a parent or guardian.

poverty.¹⁶ As such, it appears that current law, properly applied, does not grant a dependency court jurisdiction solely on the basis of a parent's financial condition.

Unfortunately, however, the author and sponsor of the bill report that, in practice, dependency jurisdiction has been exercised over children where their parents have been unable to afford items deemed necessary by a social worker, such as cough syrup. As the bill's supporters point out, removing a child from their family is inherently traumatic and foster youth are statistically more likely to suffer poor outcomes than children who remain in their family homes, particularly when the child is a person of color. The author, sponsor, and supporters thus believe it is important to clarify that conditions of poverty *alone* do not give a dependency court jurisdiction over a child.

To that end, this bill adds to the existing provision stating that a dependency court does not have jurisdiction over a child solely because the parent has not provided emergency shelter for the child.¹⁷ Specifically, the bill states that there is no jurisdiction solely due to conditions of financial difficulty, including, but not limited to, poverty, homelessness, indigence, or the inability to afford food, clothing, home or property repair, or childcare. The bill also provides that there is no jurisdiction due to conditions of financial difficulty leading to lack of access to medical care or resources or the inability to provide food, except where the child is experiencing malnourishment or a medical emergency, and there are no available resources from a community organization that could expediently remedy those conditions.

As currently drafted, the bill's requirement that a child be *currently* suffering from malnourishment or a medical emergency is inconsistent with the statute's general purpose of establishing jurisdiction before a crisis point, i.e., when there is a *risk* of substantial harm or injury. The author has agreed to amendments that will bring this provision in line with existing law, as well as to remove the provision relating to potential resources from a community organization. These amendments are discussed further below.

4. Amendments

As noted above, the author has agreed to amend the bill to provide that a child need not already be suffering from malnourishment or a medical emergency in order for the dependency court to step in and have jurisdiction over the child. The amendments will provide instead, consistent with existing law, that jurisdiction exists where the child is at risk of such conditions.

The author has also agreed to remove the second sentence in that provision, which currently would prevent jurisdiction where a child is malnourished or suffering a

¹⁶ See *R.T.*, *supra*, 3 Cal.5th at p. 624.

¹⁷ Welf. & Inst. Code, § 300(b)(1).

medical emergency where resources from a community organization *could* resolve the issue. As drafted, this language puts no onus either on social services to connect the parent to these community organizations, and has no guardrails to allow dependency jurisdiction where parents have willfully or negligently failed to take advantage of such resources, which seems to leave a gap in dependency jurisdiction for certain children suffering severe harm. Rather than tweak this provision at this time, the author has agreed to delete the provision and will, with the sponsors and stakeholders, continue discussions to develop language to ensure that social workers are connecting parents with resources before recommending dependency jurisdiction.

The specific amendments are as follows, subject to any technical or nonsubstantive changes the Office of Legislative Counsel may make:

Amendment 1

On page 3, in line 2, after “not” insert “at risk of”

Amendment 2

On page 3, in line 3, strike out “If available resources” and strike out lines 4 to 6 inclusive.

5. Arguments in support

According to the California Chapter of the National Association of Social Workers, writing in support:

Currently, the definition of neglect is overly broad. It provides a social worker free reign to initiate the removal of a child from their parents for relatively minor circumstances relating to poverty. The definition in the WIC code should be refined so that conditions such as a partially empty refrigerator, damaged furniture, or temporary inability to afford childcare while working a low wage job will not alone result in the removal of a child from their parents. Poverty and a historical lack of access to resources, especially for racial minorities, should not be further adjudicated by our Court, separating families for unreasonable and arbitrary reasons.

SB 1085 amends WIC Section 300 to address the overly broad definition of neglect and provide a more comprehensive outline. The statutes in place that created WIC Section 300, therefore outlining the definition of neglect, were chaptered in 1976. Since then there have been minor legislative changes to the language, however none have addressed the overarching definition of neglect. This bill will address this longstanding issue by both protecting vulnerable

communities and allowing social workers to make more informed reporting of neglect.

More specifically, SB 1085 will effectively specify an exception for parents impacted by poverty. This will raise the standards statewide for considerations of “neglect” by social workers that initiate petitions separating children from their parents. We should stop punishing parents for being poor and do everything we can to assist the families that find themselves subjected to the system. Especially those that are vulnerable to implicit bias and arbitrary standards of “neglect,” particularly racial minorities disproportionately impacted by this issue. It is for these reasons that NASW-CA is proud to support SB 1085, and we ask for your support

SUPPORT

Dependency Legal Services of San Diego
Los Angeles Dependency Lawyers, Inc.
National Association of Social Workers, California Chapter
Pacific Juvenile Defender Center

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 2595 (Jones-Sawyer, 2022) provides that a child shall not become a dependent of the juvenile court under Section 301(b) solely due to a parent’s use of cannabis, possession of cannabis products or accessories, or growth of cannabis by a parent or guardian, or the presence of cannabinoid components or metabolites in the parent or guardian’s bodily fluids. AB 2595 is pending before the Assembly Appropriations Committee.

Prior Legislation:

AB 841 (Cunningham, Ch. 98, Stats. 2021) added an exception to the circumstances in which a child falls within the jurisdiction of the juvenile court, providing that a child does not fall within the juvenile court’s jurisdiction solely due to the failure of the child’s parent or alleged parent to seek court orders for custody of the child.

SB 885 (Committee on Budget and Fiscal Review, Ch. 29, Stats. 2014) clarified that a child who is a victim of human trafficking and whose parent or guardian failed to or was unable to protect the child falls within the jurisdiction of the juvenile court.

AB 2723 (Chávez, 2016) would have provided that a child who has engaged in specified violations of the Penal Code relating to soliciting, or loitering with the intent to commit, prostitution falls within the jurisdiction of the juvenile court. AB 2723 died in the Senate Appropriations Committee.

AB 2035 (Chesbro, 2014) would have clarified that a child who is a victim of human trafficking and whose parent or guardian failed to or was unable to protect the child falls within the jurisdiction of the juvenile court. AB 2035 was vetoed by Governor Brown, whose veto message stated that the bill was premature in light of ongoing efforts to combat commercial sexual exploitation of children.

AB 2001(Ammiano, 2014) would have provided that a child falls within the jurisdiction of the juvenile court when they reside in a runaway and homeless youth shelter and other evidence supports a finding of abuse or neglect. AB 2001 died in the Senate Appropriations Committee.

SB 738 (Yee, 2013) would have clarified that a child who is a victim of human trafficking and whose parent or guardian failed to or was unable to protect the child falls within the jurisdiction of the juvenile court, until January 1, 2017. SB 738 died in the Assembly Human Services Committee.
