

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

SB 537 (Rubio)
Version: April 22, 2021
Hearing Date: April 27, 2021
Fiscal: Yes
Urgency: No
JT

SUBJECT

Child welfare: domestic violence

DIGEST

This bill seeks to protect parents and guardians who are victims of domestic violence and involved with the child welfare system. The bill provides for a workgroup to produce a report on the intersection of the child welfare system and domestic violence.

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 foster care system if, among other things, the parent or guardian’s failure to supervise or protect the child causes them to suffer, or creates a substantial risk that the child will suffer, serious physical harm or illness. However, some parents or guardians who are victims of domestic abuse have been accused of failing to protect the child, compounding the trauma of abuse with that of potentially losing their child.

This bill prohibits a finding that a child is a person described in section 300(b) solely due to the parent or guardian being a victim of domestic violence unless the court finds that the conditions stated in that provision are met. The bill also requires the State Department of Social Services, on or before July 1, 2022, to convene a workgroup to examine the nexus between child welfare and domestic violence and the impacts of child welfare policy on families experiencing domestic violence, and to submit a related report to the Legislature on or before December 31, 2022. The bill is supported by A Community for Peace, the California Protective Parents Association, and Next Door Solutions to Domestic Violence. The bill has no known opposition. The bill passed the Senate Human Services Committee by a vote of 5-0. Amendments are proposed on pages 5 and 7.

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.)¹
- 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).)
- 4) Defines domestic violence as abuse perpetrated against specified family members, cohabitants, and intimate partners. (Fam. Code § 6211.) Defines "abuse" to include physical injury, assault, and various types of psychological abuse, including disturbing the peace of the other party, which is conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party. (§§ 6203, 6320(a), (c).) Such conduct includes coercive control, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty. (§ 6320(c).)

This bill:

- 1) Finds and declares:
 - a) Families that experience domestic violence are often brought to the attention of the child welfare system. The intersection between domestic violence and the welfare of a child is often complex, with multiple agencies

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

- involved in determining the best course of action to aid the child and the family.
- b) Individuals working in the child welfare system and domestic violence advocates have come together to better understand this nexus and to work together to address the impact of domestic violence on children, and the effects of child welfare policy on families experiencing domestic violence.
 - c) It is the intent of the Legislature to ensure that child welfare policy reflects the most current understanding of domestic violence and trauma, and that both the parents and children are provided with the support they need, including support to prevent entry into the child welfare system or support to reunify as a family.
- 2) Prohibits a finding that a child is a person described in section 300(b) solely due to the parent or guardian being a victim of domestic violence unless the court finds that the conditions stated in that provision are met. Incorporates the Family Code definition of domestic violence.
- 3) Requires the State Department of Social Services, on or before July 1, 2022, to convene a workgroup to examine the nexus between child welfare and domestic violence and the impacts of child welfare policy on families experiencing domestic violence. Requires the department, on or before December 31, 2022, and based on the findings of the workgroup, to submit a report to the Legislature containing recommendations on ways to improve outcomes for children and families referred to the child welfare system who are experiencing domestic violence.

COMMENTS

1. Failure to protect and domestic violence

Section 300(b) provides that a child may be brought into the foster care system if, among other things, the parent or guardian's failure to supervise or protect the child causes them to suffer, or creates a substantial risk that the child will suffer, serious physical harm or illness. The author argues:

California law as currently written is insufficient when it comes to properly addressing domestic violence within the child welfare system. Throughout California, many domestic violence service providers report that it is common for clients – most often times abused women – to be charged with 'failure to protect.' In some cases, this charge of failure to protect can often lead to the abused parent temporarily losing custody of the child for months, years, or in some instances may lead to the perpetrator securing custody of a child. Failure to protect fails to recognize the trauma a parent, who is a domestic violence survivor, what they may be experience within the court system.

To address this problem, the bill would provide that a child cannot be found to be a person described by section 300(b) solely due to the parent or guardian being a victim of domestic violence unless the court finds the conditions stated section 300(b) are met. However, it is not clear what the impact of this is: regardless of the circumstances, it is necessarily true that section 300(b) does not apply to a person unless the conditions stated section 300(b) are met. Moreover, the focus on the harm to the parent or guardian arguably does not answer the fundamental question of whether the child is safe in a home with an abuser.

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 300.² 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.³

Under existing law, if domestic violence is perpetrated by an adult family member against a child, the actual harm suffered by the child provides a clear basis for dependency jurisdiction based on the actual harm suffered by the child. (§ 300(a), (b), (c).) Dependency jurisdiction may also apply if the source of domestic violence is a sibling and the parent fails to protect the child. (§ 300(b).) When domestic violence is committed by one parent against another but not directly against the child, dependency jurisdiction may apply if the child has suffered or is at substantial risk of suffering serious physical or emotional harm. (§ 300(a), (b), (c).)⁴

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.) "Physical violence between a child's parents may support the exercise of jurisdiction under section 300, subdivision (b) but only if there is evidence that the violence is ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm." (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717.) *In re Heather A.* (1996) 52 Cal.App.4th 183, 194 upheld a finding of dependency jurisdiction where the children were in the household during repeated violent confrontations between their father and stepmother that were likely to continue.⁵ The court rejected the argument that section 300(b) did not apply, stating: "It is clear to this court that domestic violence in the same household where children are living *is* neglect; it is a failure to protect [the children] from the substantial risk of encountering the

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

³ *Id.*

⁴ *Id.* at 2-323.

⁵ The whereabouts of the biological mother were unknown. (*Id.* at 187.)

violence and suffering serious physical harm or illness from it.” (*Id.*, emphasis in original.)

However, if the child was not exposed to the domestic violence and it is not ongoing or likely to continue, the risk of physical harm to the child may no longer be substantial. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717 [domestic violence occurred years earlier and parents had since been separated]; *In re Jesus M.* (2015) 235 Cal.App.4th 104, 113 [same].) *In re M.W.* (2015) 238 Cal.App.4th 1444 involved a 7-year old domestic violence incident between parents who were since separated but continued to have some contact. Although the mother called the police and the batterer was arrested, the mother declined to press charges or seek a restraining order. The child welfare agency argued the mother had failed to protect her children, as it turned out the father had engaged in other violent crimes she was unaware of. (*Id.* at 1450.) The court held “there is no substantial evidence connecting the single domestic violence in incident [seven years prior] to a risk of current harm to the children.” (*Id.* at § 1455.)

As can be seen, the fundamental question under section 300 is whether the child is currently in danger in the home. The purpose is not to punish the parent but rather to protect the child, and the fact that one parent is not a threat to the child does not make the household safe. The underlying premise of this bill seems to be that a parent who is the victim of domestic violence should not be further harmed by losing their child. While this is undoubtedly so, it does necessarily not follow that the child should remain in the home, particularly if the abuser is still there and they present an ongoing threat to the child.

To clarify the focus of the bill, the author has agreed to the following amendment:

Amendment

In section 2 of the bill, amend section 300.4 as follows:

300.4. ~~A child shall not be found to be a person described by subdivision (b) of Section 300 solely due to the parent or guardian being a victim of domestic violence unless the court finds the conditions stated in subdivision (b) of Section 300 are met.~~ For purposes of subdivision (b) of section 300, the fact that a parent or guardian experienced domestic violence shall not be the sole basis for deeming the parent or guardian to have failed to protect the child or youth. This does not supersede a determination of whether the child has suffered, or there is a substantial risk that the child will suffer, serious harm or illness pursuant that subdivision. For purposes of this section, “domestic violence” has the same meaning as defined in Section 6211 of the Family Code.

2. Report on the intersection of the child welfare system and domestic violence

This bill would require the State Department of Social Services, on or before July 1, 2022, to convene a workgroup to examine the nexus between child welfare and domestic violence and the impacts of child welfare policy on families experiencing domestic violence. The bill would require the membership of the workgroup to include interested parties and stakeholders, as specified, and would require the workgroup, among other things, to examine policies and procedures related to child welfare engagement in cases in which domestic violence is present in a child's home, review best practices and recommendations from research related to child welfare and domestic violence, and identify gaps in the child welfare system in which additional training, oversight, or policy changes may be needed to achieve improved outcomes for children and families experiencing domestic violence. The bill would require the department, on or before December 31, 2022, and based on the findings of the workgroup, to submit a report to the Legislature containing recommendations on ways to improve outcomes for children and families referred to the child welfare system who are experiencing domestic violence.

The author argues: "This bill will ensure that child welfare agencies and domestic violence service providers work together to examine and establish protocols that best serve families experiencing abuse, while also ensuring the abused parent has protections under failure to protect." The California Protective Parents Association adds: "This bill moves our legislation to be more trauma informed and will bring together agencies to ensure all can be done to understand domestic violence and separate that from the parenting of one going through abuse. Limiting the amount of trauma to a child will ensure for more resilience and faster healing."

The Los Angeles County Domestic Violence Council is currently working on two projects to address the intersection of domestic violence and the child welfare system, one with researchers from UCLA and the other with various stakeholders. These projects are set to wrap up this year and could provide information and recommendations that could be useful for the bill going forward.

Finally, the workgroup must include county agencies, victim service organizations, child advocacy organizations, organizations representing child welfare workers, and persons with lived experience in both domestic violence and child welfare systems. To further ensure the inclusivity and diversity of the workgroup, the author has agreed to add tribal representatives as part of the membership of the workgroup.

Amendment

In section 3 of the bill, add tribal representatives as members of the workgroup.⁶

⁶ Amendments may include technical, nonsubstantive changes recommended by the Office of Legislative Counsel and additional co-authors.

SUPPORT

A Community for Peace
California Protective Parents Association
Next Door Solutions to Domestic Violence

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.

PRIOR VOTES:

Senate Human Services Committee (Ayes 5, Noes 0)
