

ASSEMBLY THIRD READING

AB 1686 (Bryan)

As Amended January 31, 2022

Majority vote

SUMMARY

Creates 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.

Major Provisions

- 1) States the findings of the Legislature that:
 - 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 reunify 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 the Department of Social Services (DSS) 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 that DSS, by October 1, 2023, revise its regulations to implement the changes in 2), above.

COMMENTS

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. At the same time, when a child is removed from their family, child welfare agencies are required, where appropriate, to refer the parents to the state's child support program, 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. (42 United States Code (U.S.C.) Section 671(a)(17); United States (U.S.) Department of Health and Human Services, Child Welfare Policy Manual.) Unfortunately a referral to child support enforcement can make reunifying a child with their parents much harder, delaying reunification and increasing fiscal uncertainty for the family, while also not being cost-effective for the state. Any

money collected does not go to support the child or family, but to recoup the child welfare expenses. However, the cost of collection well exceeds any collections.

This bill seeks to help children and their parents in the child welfare system more successfully reunify 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. This will still allow the child welfare agency to comply with federal law and review each case separately to determine whether it is appropriate for referral for child support enforcement. But it will help ensure that only appropriate cases where child support enforcement will not pose a barrier to reunification are referred.

Child support enforcement referral of parents whose children are in the child welfare system.

When a child is removed from their family, child welfare agencies are required to refer the parents to the state's child support program where appropriate. (42 U.S.C. Section 671 (a)(17).) Any money collected from those parents does not go to support the child, but to reimburse the government for the cost of the child welfare program. 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. (See U.S. Department of Health and Human Services, *Child Welfare Policy Manual*, 8.4C, citing ACYF-CB-PIQ-98-02 (revised June 6, 2013).)

California has expanded upon the federal law, requiring DSS, in consultation with DCSS, to establish regulations by which the 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. (Family Code Section 17552.) DSS regulations provide that, in the required individual case evaluation, the child welfare agency must consider "the 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." (DSS, *Manual of Policies and Procedures* 31-503.11.) If the child's case plan is reunification, the social worker must consider whether payment of child support will compromise certain things. (*Ibid.*)

Additionally, Family Code Section 17552 provides that if reunification services are not offered or are terminated the case may be referred to the LCSA 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. 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.

Difficulties of child support enforcement for families trying to reunify. Research shows that a referral to child support enforcement can make reunifying a child with their parents much harder, delaying reunification and increasing fiscal uncertainty for the family. In particular, a study from Wisconsin found that each \$100 in child support payments made by mothers increased their children's stay in foster care by 6.6 months. (Maria Cacia *et al.*, *Making parents pay: The unintended consequences of charging parents for foster care*, 72 Children and Youth Services Review 100, 108 (2017).) The results for families with Black mothers are even worse. (*Ibid.*) Thus, collecting child support from families in the child welfare system who are trying to reunify

delays that reunification, which harms children and families, and increases the costs of the child welfare system – everything from social workers, to courts, to placements and services for the family – as children are forced to spend more time in it.

Additionally, child support obligations for families in the child welfare system fall disproportionately on low-income families. A study of California's caseload found that over half of child welfare parents in the child support caseload had annual income of less than \$10,000. (Steve Eldred, *Kids in care: Best practices at the intersection of child support and child welfare*, National Child Support Association conference (2020); Jill Duerr Berrick, *Proposed California Legislative Reform Relating to Elimination of Child Support Obligations for Child Welfare-Involved Families*, University of California, Berkeley (undated).) This is consistent with data reported by the Legislative Analyst's Office, which found that "families 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." (Legislative Analyst's Office, *The 2022-23 Budget: Analysis of Child Welfare Proposals and Program Implementation Updates* (February 2022), page 3.)

Moreover, any money collected does not go to support the child or family, but to recoup the state and federal government's child welfare expenses. However, the cost of collection well exceeds any collections. California collects only 27 cents for every dollar spent expended to collect the money. (Orange County Department of Child Support Services, *Child Support and Foster Care in California*, page 6.) Thus, looking at this strictly as a cost-recovery tool and not focusing on the negative impacts to children and families, attempting to collect child support from families in the child welfare system has been a costly failure for the state and federal government.

This bill creates a presumption that child support enforcement will pose a barrier to family reunification. In order to address the problems of trying to collecting child support from families seeking to reunify with their children in the child welfare system, this bill requires that, when making the individualized 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 make an individualized determination in each, but also rightly creates a presumption – which can be overcome in appropriate cases – that child support and family reunification are at odds with each other. This is further supported by the bill's legislative findings, which state:

- 1) In reunification cases, attempts to collect child support are both cost ineffective and have been proven to harm reunification efforts and destabilize families.
- 2) 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.
- 3) It is the intent of the Legislature to limit the referral of these out-of-home cases to county child support enforcement departments.

The bill requires that the presumption against referral for child support enforcement be updated in DSS regulations and gives DSS until October 1, 2023 to update the regulations. This provides DSS enough time to revise its regulations, but ensures that it is done quickly to prevent the unwarranted and counter-productive referral for child support enforcement of many child welfare families actively working toward reunification with their children.

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.

Arguments in Support

In support of this bill, a broad coalition of children and family organizations write:

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. This, in spite of the fact that the separation was involuntary. 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. The effects are especially pronounced for Black families and as you are likely aware, Black families are dramatically over-represented in California's child welfare system.

The current policy not only has pernicious effects on families, but studies show that it is costly. A California study showed that for every \$1.00 the government spends on locating, tracking, and enforcing these payments, only 27 cents are recouped. In short, efforts to implement the current law are cost ineffective at a 3:1 ratio, all at taxpayers' expense.

AB 1686 provides clarification of current law, thus narrowing the circumstances that would allow child welfare professionals to refer parents for foster care repayment. It does so within the limitations of federal law.

Arguments in Opposition

No opposition on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, possible revenue loss (General Fund (GF)) in the millions of dollars to the Department of Child Support Services (CDCSS) as a result of a decrease in child support payments. DSS estimates that from July 2021 to January 2022, child support collections on foster care cases were approximately \$11.9 million (\$4.1 million GF). If that collection rate remains the same for the rest of the year, DCSS estimates approximately \$21.2 million (\$7.2 million GF) in child support collections on foster care cases for fiscal year (FY) 2021 with \$17.7 million (\$6.0 million GF) distributed to state, federal and county governments to repay the cost of foster care. DSS further notes this bill will result in fewer foster care referrals to the child support program, which would result in less child support collections and recovery. While the exact impact of the reduction is unknown, an assumed

corresponding 20% reduction in child support collections would result in a loss of approximately \$4.24 million (\$1.44 million GF revenue) in annual collections.

VOTES**ASM JUDICIARY: 7-3-0**

YES: Stone, Holden, Kalra, Maienschein, Reyes, Robert Rivas, Wicks

NO: Cunningham, Davies, Kiley

ASM HUMAN SERVICES: 6-1-1

YES: Arambula, Mia Bonta, Bryan, Stone, Villapudua, Waldron

NO: Davies

ABS, ABST OR NV: Calderon

ASM APPROPRIATIONS: 12-4-0

YES: Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

NO: Bigelow, Megan Dahle, Davies, Fong

UPDATED

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CONSULTANT: Leora Gershenzon / JUD. / (916) 319-2334

FN: 0002477