

Date of Hearing: March 15, 2022

ASSEMBLY COMMITTEE ON JUDICIARY

Mark Stone, Chair

AB 1686 (Bryan) – As Amended January 31, 2022

SUBJECT: CHILD WELFARE REUNIFICATION: PRESUMPTION AGAINST CHILD SUPPORT ENFORCEMENT

KEY ISSUE: IN ORDER TO BETTER FACILITATE FAMILY REUNIFICATION FOR CHILDREN IN THE CHILD WELFARE SYSTEM, SHOULD THERE BE A PRESUMPTION THAT PAYMENT OF CHILD SUPPORT IS LIKELY TO POSE A BARRIER TO THE FAMILY'S EFFORTS TO REUNIFY?

SYNOPSIS

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 U.S.C. Section 671 (a)(17); 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, sponsored by the Alliance for Children's Rights, the County Welfare Directors Association, and Los Angeles Dependency Lawyers, 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. This bill is supported by a broad coalition of child and family advocates, including California Youth Connection, Children Now, and Legal Services for Prisoners with Children. It is supported if amended by the Child Support Directors Association who request amendments that could render the bill ineffective.

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. Specifically, **this bill:**

- 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).

EXISTING LAW:

- 1) Establishes that the purpose of the juvenile court dependency system is maximum safety and protection for children who are currently being abused, neglected, or exploited. Provides that the focus is on the preservation of the family, as well as the safety, protection, and physical and emotional well-being of the child. (Welfare & Institutions Code (WIC) Section 300.2.)
- 2) If at the initial hearing the juvenile court orders a child removed from their parent due to abuse or neglect, requires the court to order that child welfare reunification services be provided to the family as soon as possible in order to reunify the child with their family, if appropriate. (WIC Section 319 (e).)
- 3) Requires the court, at the dispositional hearing, to order a social worker to provide child welfare services to a child who has been removed from their parents' custody and to the parents in order to support the goal of reunification, for a specified time period, except under certain circumstances. Provides that children and families in the child welfare system should typically receive a full six months of reunification services if the child is under three years of age, and twelve months if the child is over three years of age, but that may be extended up to 18 or 24 months, as provided. (WIC Section 361.5 (a).)
- 4) Provides that reunification services under 3), above, need not be provided if the court finds, by clear and convincing evidence, that one of 17 specified conditions exist, generally situations where reunification would be dangerous for the child. Despite this limitation, allows a court to order reunification services in those instances if the court finds, by clear and convincing evidence, that reunification is in the child's best interest. (WIC Section 361.5 (b), (c).)
- 5) Requires DSS, in consultation with Department of Child Support Services (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 (LCSA) for child support services. 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. In making the determination, requires DSS provide factors for the county child welfare department to consider, including:

- a) Whether the payment of support by the parent will pose a barrier to the proposed reunification, in that the payment of support will compromise the parent's ability to meet the requirements of the parent's reunification plan; and
 - b) Whether the payment of support by the parent will pose a barrier to the proposed reunification in that the payment of support will compromise the parent's current or future ability to meet the financial needs of the child. (Family Code Section 17552.)
- 6) Requires DCSS, in consultation with DSS, to establish regulations for the compromise of child support arrearages owed as reimbursement for public assistance when the child is returned to the custody of the obligor in either of the following circumstances: (a) the child had been adjudged a dependent of the juvenile court, but has since been reunified with the obligor pursuant to an order of the juvenile court; or (b) the child had been placed with a guardian or relative caregiver, who received public assistance for the child, and the child has since been returned to the home of the obligor. (Family Code Section 17550.)
- 7) Provides, under Title IV-E of the federal Social Security Act, that, *where appropriate*, all steps be taken, to secure an assignment to the state of any child support rights to support on behalf of each child receiving foster care maintenance payments, as provided. (42 U.S.C. Section 617 (a)(17).)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

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 U.S.C. Section 671 (a)(17); 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.

In support of the bill, the author states:

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.

Parents generally offered reunification services to further the priority of the child welfare system.

Since the goal of the dependency system is, whenever possible, to reunite children with their families, parents are generally provided services in order to safely reunify with their children in foster care. These services are designed to address the circumstances that caused the child to be removed from the parents in the first place, such as drug or alcohol treatment, anger management counseling, or parenting classes, so that the child can be safely returned to their home.

However, there are 17 instances when a parent or guardian can be denied reunification services, generally because the parent's or guardian's behavior is such that denial of services is necessary in order to protect children from further harm. In particular, if the juvenile court finds, by clear and convincing evidence, that one of the 17 instances exists reunification services can be denied. These instances include the parent is suffering from a mental disability that renders the parent incapable of using the reunification services; the parent caused the death of another child through abuse or neglect; the child or a sibling had previously been adjudicated a dependent as the result of physical or sexual abuse and the child is now being removed due to additional physical or sexual abuse; and the parent has been convicted of a violent felony. (Section 361.5 (b).)

However, even in these cases, a court may still choose to grant reunification services to the parent if the court determines that it is appropriate. In most cases, though, the court may only do so if it finds, again by clear and convincing evidence, that reunification is in the child's best interest. (Section 361.5 (c).) Foregoing reunification services generally speeds up the timeframe for finding an alternative permanency plan for the child, whether adoption or tribal customary adoption, guardianship, or even long-term foster care, but generally cuts off the child from their family.

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. Federal guidance on when it is appropriate to refer parents for child support enforcement states that the child welfare agency "should evaluate [the case] on an individual basis, considering the best interests of the child and the circumstances of the family. For example, is the parent working towards reunification with the child, consistent with the case plan? Would the referral impede the parent's ability to reunify with the child? Has the parent agreed to pay for the costs of out-of-home care or to temporarily accept a reduction in the

adoption assistance payment? Questions of this nature should guide the agency's decision making regarding whether or not the referral should be made to the [child support] agency.” (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.) In making the determination, DSS must provide factors for the county child welfare department to consider, including:

- Whether the payment of support by the parent will pose a barrier to the proposed reunification, in that the payment of support will compromise the parent’s ability to meet the requirements of the parent’s reunification plan; and
- Whether the payment of support by the parent will pose a barrier to the proposed reunification in that the payment of support will compromise the parent’s current or future ability to meet the financial needs of the child. (*Ibid.*)

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:

- The parent’s ability to meet the requirements of the reunification plan if the child’s case is referred to the local child support agency;
- The parent’s ability to meet the current or future financial needs of the child if the child’s case is referred to the local child support agency; and
- The parent’s ability to meet the needs of other children in the household who may be at risk of removal. (*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*, U.C. 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* (Feb. 2022), p. 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*, p. 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:

- In reunification cases, attempts to collect child support are both cost ineffective and have been proven to harm reunification efforts and destabilize families.
- 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.
- 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.

Child Support Directors Association will support the bill if amended to change existing law to make it easier to refer cases for child support enforcement. Existing law provides that “[i]f reunification services are not offered or are terminated, the case may be referred to the local child support agency, 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 current placement with the related guardian, or the permanent plan is transitional foster care for the nonminor,” as provided. (Family Code Section 17552 (a)(1).) This bill does not change that provision at all, but just adds the presumption that payment of child support is likely to pose a barrier to reunification. The existing standard which generally does not apply when reunification services are not offered or are terminated remains the same.

Despite this, the Child Support Directors Association writes that they “are concerned the amendments introduced by AB 1686 would be too easily and over-broadly interpreted to mean NO case may be referred to child support. This may include parents who never participated in or have not successfully completed a family reunification plan.” They request an amendment that the presumption not apply in cases where “reunification services are not offered or are terminated.” That change is not only unnecessary because existing law on this issue covers it, but also is more restrictive than existing law, which does not permit a referral if 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 current placement with the related guardian, or the permanent plan is transitional foster care for the nonminor. This requested change could enable more families working on reunification to be referred to child support enforcement even when such a referral is counter-productive to the children remaining close with the family.

Additionally, the Child Support Directors Association asks that the presumption that the payment of support by the parent *is likely to* pose a barrier to the proposed reunification be replaced with a presumption that payment of support by the parent *may* pose a barrier to the proposed reunification. That, however, would effectively negate the presumption and not help protect children, families, or the state’s limited resources to invest in unproductive child support collection cases.

ARGUMENTS IN SUPPORT: In support of the 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.

REGISTERED SUPPORT / OPPOSITION:**Support**

Alliance for Children's Rights (co-sponsor)
County Welfare Directors Association of California (co-sponsor)
Los Angeles Dependency Lawyers (co-sponsor)
California Alliance of Child and Family Services
California Youth Connection
Child Support Directors Association of California (if amended)
Children Now
Communities United for Restorative Justice (CURYJ)
Dependency Advocacy Center
Dependency Legal Services
East Bay Children's Law Office
East Bay Family Defenders
Ella Baker Center for Human Rights
John Burton Advocates for Youth
Justice2Jobs Coalition
Law Foundation of Silicon Valley
Legal Services for Prisoners with Children
Public Counsel
San Francisco Financial Justice Project
Starting Over, Inc.

Opposition

None on file

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