



June 17, 2021

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative regarding juvenile dependency proceedings (A.G. File No. 21-0004, Amendment #1).

Background

Jury Trials. Both the U.S. Constitution and the California Constitution state that individuals possess the right to a jury trial in criminal cases and certain civil cases. Under current law, in civil cases where individuals are pursuing the recovery of property or compensation for damages, issues of fact must be tried by a jury unless the jury trial is waived. The California Constitution specifies that juries in criminal and civil cases will typically consist of 12 individuals. Jury decisions in criminal cases must be unanimous, while jury decisions in civil cases can be made with the agreement of 75 percent of the jurors. State law includes various provisions to ensure a fair and impartial jury is selected, such as requiring that individuals selected for jury service generally be selected at random. Currently, jury trials are not used in California for juvenile dependency proceedings.

Juvenile Dependency Proceedings. Juvenile dependency proceedings involve a determination of whether the court should assume authority over children (also known as making children dependents of the court) due to allegations of child abuse or neglect. Such allegations are generally first reported to and investigated by a county child welfare department. The department can either immediately remove the child from his or her home and place the child in protective custody or leave the child in the home. If the department believes that there is sufficient evidence of child abuse or neglect, it will file a petition requesting that the child become a dependent of the court. Child welfare departments are often represented by county attorneys in juvenile dependency proceedings. There are roughly 40,000 juvenile dependency filings annually statewide.

After a petition is filed, the court will hold various hearings as required by state law. State law also dictates other procedures that must be followed (such as the burden of proof necessary to justify the continued removal of a child) as well as the information that must be submitted for consideration. An initial hearing is held where various decisions are made, including whether to leave a child in protective custody and whether to appoint separate state-funded attorneys for the child and the parents (if the parents cannot afford an attorney). A jurisdictional hearing is then

held to determine whether the allegations of abuse and neglect are substantiated and if the child should be made a dependent of the court. If the child is made a dependent of the court, a disposition hearing is held to determine the conditions or requirements for the parents to meet to help determine whether to terminate the child's dependency status and reunify the family. Such conditions could include temporarily removing the child from his or her home and requiring parents to attend certain programs (such as substance abuse programs or counseling). Review hearings are generally held every six months to monitor the family's progress in meeting the specified conditions. If the court determines that it is not in the best interest of the child to remain with his or her parent, a permanency hearing is conducted to determine the long-term plan for the child, which could include terminating parental rights, adoption, long-term foster care, or legal guardianship. The court's decision to permanently terminate parental rights is generally binding and cannot be modified. However, parents can appeal the decision.

Burdens of Proof in Juvenile Hearings. Specific burdens of proof must be met for the court to make certain decisions. For example, in certain review hearings, the court is generally required to return a child to his or her parents or legal guardian unless the court finds by a "preponderance of the evidence" (generally understood to mean more than a 50 percent chance) that the return would create a substantial risk to the well-being of the child. In contrast, a higher burden of proof, known as "clear and convincing evidence," must be met for the court to terminate a parent's rights to a child.

Proposal

This measure proposes various changes to existing state law primarily related to juvenile dependency proceedings. Key changes include:

- ***Increased Burden of Proof.*** The measure specifies that the court has a duty to verify "beyond a reasonable doubt" allegations against parents or guardians in order to prevent the unnecessary removal of children. This is a higher standard of proof than is currently required and is the standard of proof required for conviction in criminal cases.
- ***Decisions Through Jury Trials.*** The measure specifies that a jury shall make determinations related to whether to return a child that has been removed and that jury trial participants are to be selected by the child's parent or parent-appointed guardians. The measure also specifies that parents have the right to a jury trial related to the termination of parental rights and the permanent placement of children.
- ***Right to Reopen Cases.*** The measure specifies parents, guardians, siblings, or children have the right to reopen closed cases where there was no jury trial prior to a court ruling on the permanent placement of children.

Fiscal Effects

Based on the way the measure is written, it could be subject to various interpretations by the courts. This is primarily because the measure does not directly strike out specific existing laws relating to juvenile dependency proceedings. As such, it is unclear whether the measure would

have the effect of eliminating certain existing proceeding requirements—such as the requirement that certain hearings take place and that the court consider certain information (such as social worker reports)—and the court’s authority to make certain decisions.

Accordingly, the fiscal effects of the measure on state and local governments are subject to significant uncertainty. Specifically, these effects and their magnitude would depend significantly on how this measure is interpreted and implemented by the courts as well as how individuals respond to its provisions.

State Court Impacts. This measure would result in both one-time and ongoing fiscal impacts on the state courts. Since jury trials are currently not available in juvenile dependency cases, the courts would incur one-time costs to develop regulations and procedures to allow for such jury trials. It is also possible that some courts could incur one-time costs to modify some existing courtrooms that currently hear such cases, but are not constructed to accommodate a jury. Courts would also incur one-time costs to the extent that individuals choose to reopen juvenile dependency cases that were closed without a jury trial. The magnitude of such one-time costs would depend on how individuals and the state courts respond to this measure—such as the number of individuals who choose to reopen previously closed juvenile dependency cases.

Additionally, the courts would incur ongoing costs as juvenile dependency proceedings would involve additional workload and likely take longer—such as for parties to provide more evidence in order to meet the higher burden of proof, the selection of a jury, and the determination of what information may be presented to the jury. Longer hearings could also add to the workload of state-funded attorneys representing children and/or parents in these cases.

The magnitude and direction of these costs would depend significantly on whether the courts interpret this measure to eliminate certain existing requirements for juvenile dependency proceedings—which could reduce court workload. Thus, the fiscal impact of this measure on state courts is unknown.

Other Fiscal Impacts. County child welfare departments and county attorneys would experience a one-time increase in workload to the extent that individuals choose to reopen juvenile dependency cases that were closed without a jury trial. The measure would likely also result in an ongoing increase in county workload as juvenile dependency hearings would likely take longer. For example, child welfare departments and/or county attorneys may need to spend more time (1) collecting and verifying information to meet the higher burden of proof and (2) preparing for jury trials because of the different rules related to how and what information can be presented to a jury. However, the actual magnitude of the above county costs is unknown and would depend on various factors. In addition, some or all of the county costs resulting from increased workload could potentially be shifted to the state. This is because the California Constitution generally requires that the state fund child welfare-related cost increases resulting from state legislation.

Summary of Fiscal Effects. This measure would have the following major fiscal effects:

- Unknown fiscal impact on state courts that would depend significantly on how the measure is interpreted and implemented by the courts and the number of individuals who choose to reopen closed juvenile dependency cases.
- Potential unknown increase in county costs—some or all of which could be shifted to the state—that would depend on various factors including the number of individuals who choose to reopen closed juvenile dependency cases.

Sincerely,

for Gabriel Petek
Legislative Analyst

Keely Martin Bosler
Director of Finance