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September 3, 2024

The Honorable Gavin Newsom
Governor of the State of California
State Capitol, Suite 1173
Sacramento, CA 95814

RE: AB 3145 (BRYAN): SPONSORSHIP AND REQUEST FOR SIGNATURE

Dear Governor Newsom:

Please, imagine the following:

- Imagine if, when state agencies evaluated bidders for projects, the contracting agency was not required to look at the qualifications, backgrounds, or track records of each bidder.[1]

- In school, a 60% score is usually a "D." Imagine if failing nearly 40% of the time to safely and permanently return abused and neglected children to their families was celebrated as a "success," thereby halting any further inquiry about how to improve the rates by which children are safely reunified with their parents.

Regrettably, when it comes to how California tries to prevent children from entering foster care by keeping families together, imagining these scenarios is not required. Both are true to the cross-cutting detriment of California's children and families. The Children's Advocacy Institute at the University of San Diego School of Law, which has sought to advance the well-being of California's children through legal education, advocacy, and litigation for over 30 years, is honored to sponsor AB 3145 (Bryan) and respectfully asks that you sign this unanimously supported measure offering a surgical response to these two foundational flaws in our child welfare system.

[1] Of course, state agencies are required to examine each bidder. "A bidder is responsible if they possess the experience, facilities, reputation, financial resources and are fully capable of performing the contract." https://www.dgs.ca.gov/en/PD/Resources/SCM/TOC/14/14-04-2 *See*, for just one e.g., Public Contract Code section 20928.2.

BACKGROUND: *THE LOS ANGELES TIMES* INVESTIGATION AND THE CENTRAL IMPORTANCE OF REUNIFICATION SERVICES.

In its bombshell report about the taxpayer-funded parenting services addressed by this bill, *The Los Angeles Times* correctly observed:

> Although national research shows that some parenting classes can help prevent child abuse and keep deserving families together, in California they often amount to an over-prescribed bureaucratic remedy with no clear track record of success. Participation in them can sway custody rulings despite a lack of oversight and data, according to more than 20 child welfare experts who spoke to The Times, including social workers, attorneys, retired judges, parents and providers.
>
> "This is the big myth of child welfare," said David Myers, a Modesto-based attorney who has represented parents involved with child protective services for 30 years.
>
> Most of the parenting classes that his clients are required to complete are assigned with a "cookie cutter" approach, he said, and are "a waste of taxpayer dollars."[2]

The point of so-called reunification services is to prevent a child from becoming a foster child by curing whatever problem leads child welfare to be involved in the life of the family in the first place. As discussed below, when, as is the case statewide, there is no requirement that counties consider either the qualifications or the outcomes of each reunification service provider, that inevitably means that providers with unjustifiably high records of their parent clients returning again and again to the attention of child welfare will be selected and paid. This is both costly for state and county taxpayers, cruel for parents, and potentially dangerous to children.

Ensuring the services provided to families are of some minimal quality is especially important for California's families of color. Black children in California make up 5.6% of the California population,[3] In California, the population of Black children represented in foster care is 20%.[4]

Yet, despite the centrality of these services to the entire child welfare system, as *The Los Angeles Times* revealed, we currently have no factual basis for concluding that the millions of dollars we spend on helping families reunify with their children actually help those families.

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[2] https://www.latimes.com/california/story/2024-01-04/california-child-abuse-parenting-classes-unregulated

[3] https://ccwip.berkeley.edu/childwelfare/reports/Population/MTSG/r/rts/l (select report options, then report output = percent; row dimension = ethnic group)

[4] https://ccwip.berkeley.edu/childwelfare/reports/PIT/MTSG/r/ab636/l (select report options, then report output = percent; row dimension = ethnic group)

Nor do we have any factual basis for concluding that when a parent successfully completes court-ordered services, it is predictably safe to return a child to the parent's care. As *The Times* bluntly and correctly summed it up:

> The state does not ensure that parent education programs [in dependency proceedings] meet any sort of standards, allows parents facing abuse allegations to take classes that experts have deemed low quality, and cannot provide research evidence for half the programs listed in a state-funded database meant to act as a key tool for local officials to ensure child safety.

In the Dependency Court, "Services" are Central to Whether Parents Can Get Their Children Back.

Whether a dependency court judge will permit parents to reunify with their children or whether the judge will terminate the parental rights of parents and place a child in foster care hinges to a large degree on a parent's compliance with a case plan that includes offering services to address the issues that caused the child allegedly to be abused or neglected. Whatever services are reasonably needed to ensure reuniting a child with their parents will be safe for the child are supposed to be provided by the county. These services can range from parenting classes to drug or mental health counseling.

The foundational nature of services to all of child welfare is illustrated by these excerpts from the case of *In re M.F.* (2019) 32 Cal.App.5th 1, 13–14:

> Family reunification services play a critical role in dependency proceedings. (§ 361.5; *In re Alanna A.* (2005) 135 Cal.App.4th 555, 563, 37 Cal.Rptr.3d 579; *In re Joshua M.* (1998) 66 Cal.App.4th 458, 467, 78 Cal.Rptr.2d 110; see 42 U.S.C. § 629a(a)(7).) At the dispositional hearing, the court is required to order the agency to provide child welfare services to the child and his or her parents. (§ 361.5, subd. (a).) Services "may include provision of a full array of social and health services to help the child and family and to prevent re-abuse of children." (§ 300.2.) Reunification services should be tailored to the particular needs of the family. (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 793–794, 20 Cal.Rptr.3d336.)
>
> At each review hearing, if the child is not returned to his or her parent, the juvenile court is required to determine whether "reasonable services that were designed to aid the parent … in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent …" (§§ 366.21, subds. (e)(8) & (f)(1)(A), 366.22, subd. (a).) The "adequacy of reunification plans and the reasonableness of the [Agency's] efforts are judged according to the circumstances of each case." (*Robin V. v.*

> *Superior Court* (1995) 33 Cal.App.4th 1158, 1164, 39 Cal.Rptr.2d 743.) To support a finding that reasonable services were offered or provided to the parent, "the record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult …." (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414, 286 Cal.Rptr. 592 (Riva M.); *Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1426, 136 Cal.Rptr.3d 505 (Tracy J.).)

<u>More on the Bombshell *The Los Angeles Times* Investigation.</u>

But what if the services provided to parents are of poor or untested quality? If so, then a parent completing the offered services satisfactorily would not verifiably be a safe home for the child. Likewise, the opinion of a poor or untested service provider that a parent has been unsuccessful in meeting the goals set by such a service provider is not, in fact, a sound basis for forever severing a child from their parents and placing a child in foster care.

As *The Los Angeles Times* confirms, there is no requirement that the services we compel parents to undergo are based on … anything. No standards, no rules, no tracking of outcomes. Nothing. As *The Los Angeles Times* writes:

> ***Parenting classes are routinely ordered in child abuse cases. California isn't ensuring they work*** …
>
> The lack of scrutiny can put some of California's most vulnerable children — those whose parents are fighting for custody while under investigation by protective services — at risk of more abuse.
>
> "I don't think judges look very closely at the quality of the parenting classes," said former Judge Leonard Edwards, who oversaw child abuse cases for decades before retiring from Santa Clara County Superior Court in 2006.
>
> "It's sort of a rubber stamp in most cases." …
>
> California's approach has some leading experts stunned.
>
> "Why would you send a family to a parenting class that either you know is not effective or you have no evidence that it is? That doesn't make a lot of sense," said Amy Dworsky, a nationally recognized researcher at Chapin Hall at the University of Chicago, a policy research institution with a focus on child welfare.

> "I don't think it's too much to demand that when families are being referred to services that we have some sense that those services are effective."[5]

The Children's Advocacy Institute has verified *The Los Angeles Times* investigation. Our comprehensive memo can be found here: https://tinyurl.com/Research-Memo.

Several sources within academia confirmed over email to the Institute that they had no knowledge of any publicly available record of California counties' procedures for identifying or tracking qualifications or outcomes of individual service providers. These include Professor Jacquelyn McCrosky,[6] Dr. Lindsey Palmer,[7] and Dr. Daniel Webster of the California Child Welfare Indicators Project at UC Berkeley.[8] Dr. Webster notably recalled that the California Department of Social Services (CDSS) was, at one point, working on an internal analysis of differential outcomes across service providers. We emailed the CDSS Child Welfare Services/Case Management System Administrative Oversight Unit to see if they had any additional information regarding this internal analysis but received no response.

WHAT HAPPENED WHEN THERE WAS A SIMILAR BOMBSHELL REPORT ABOUT COUNTY PROBATION SERVICES?

A 2023 *CalMatters* investigative report came to eerily similar revelations about county probation programs:

> ***California spent $600 million to house and rehab former prisoners — but can't say whether it helped***
>
> The state does not collect data on whether parolees who participate in the program have found jobs or whether they are returned to prison for another crime. What state data does show is that only 40% of participants completed at least one of the services they were offered.[9]

In this instance, the State acted swiftly. The *CalMatters* story "prompted the California Department of Corrections and Rehabilitation to monitor parolees' job outcomes and re-incarceration rates, verify providers' licenses, and inspect the 450 treatment centers funded by the state."[10]

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[5]https://www.latimes.com/california/story/2024-01-04/california-child-abuse-parenting-classes-unregulated
[6] Professor McCrosky's profile can be found at https://pressroom.usc.edu/jacquelyn-mccroskey/; email archived at https://drive.google.com/file/d/1g5kleQFMscvYZBJZTDu2pZdOrgwxqHr4/view?usp=sharing.
[7] Dr. Palmer's profile can be found at https://www.solutionsnetwork.psu.edu/t32-grant/fellows; email archived at https://drive.google.com/file/d/1rXmih9F1iN3joYd6WMlYmm1ihTRMGZfq/view?usp=share_link.
[8] Dr. Webster's profile can be found at https://socialwelfare.berkeley.edu/people/daniel-webster; email archived at https://drive.google.com/file/d/1oQN3ZZ8UaP08JnHUUAv5svfAw8yMuMqU/view?usp=share_link.
[9] https://calmatters.org/justice/2023/07/california-prisoner-rehabilitation-centers/
[10] https://calmatters.org/inside-the-newsroom/2024/03/old-fashioned-reporting-humanity-power-calmatters-

Will the State now respond in a similar, swift, and common-sense fashion to aid the families of our allegedly abused and neglected children?

That's the question posed by AB 3145 (Bryan).

AB 3145 SURGICALLY FIXES TWO PROBLEMS IN CURRENT LAW,

Here are the two flaws in current law and how they are surgically addressed by AB 3145.

(1). ***Each provider examined.*** Welfare and Institutions Code section 16500.5 sets out the relevant legal requirements governing how counties select providers of reunification services. Strangely, the statute does not require a county to examine the backgrounds, track records, or merit of each provider with which the county contracts to provide reunification services. Instead, the law focuses the county's attention on the kinds of services being offered, not whether the provider can competently provide those kinds of services.

This would be akin to state law asking bidders whether the software they sell has merit without also asking whether the seller is qualified to install or program it.

Thus, whereas current law requires scrutiny of the kinds of services provided, not the providers of the services

> The ***services*** selected by a participating county shall be reasonable and meritorious and shall demonstrate cost-effectiveness and success at avoiding out-of-home placement, or reducing the length of stay in out-of-home placement.[11]

AB 3145 reorients this language to align with standard contracting custom and common sense. The bill will require scrutiny of each provider that will receive taxpayer funds by reference to the benchmarks in current law, namely, whether the provider offers services that are "reasonable, meritorious, and cost-effective":

> ***Each service provider,*** *at the time the provider is selected by a participating county, shall provide services that are reasonable, meritorious, and that demonstrated cost-effectiveness and success at avoiding out-of-home placement, or reducing the length of stay in out-of-home placement.*

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investigation/?utm_medium=email&utm_source=ActiveCampaign&utm_content=Investigating+a+tragic+death+within+California+s+parole+system&utm_campaign=Weekly+Matters

[11] Welfare and Institutions Code section 16500.5(c)(4), emphasis added. Government Code section 31000 provides overarching guidance requiring that county boards contract only with "special" service providers that are "specially trained, experienced, expert and competent to perform the special services." But, as the general statute, it does not clearly control over this more specific one which does not require provider-by-provider scrutiny based upon the unique benchmarks here set forth.

Moreover, the bill properly requires scrutiny under the existing benchmarks to be ongoing:

> *Service providers selected shall be reviewed for reasonableness, merit, and whether they demonstrated cost-effectiveness and success at avoiding out-of-home placement, or reducing the length of stay in out-of-home placement no less than every three years after selection.*

Finally, among the many amendments taken in collaboration with the County Welfare Directors Association is the following, which integrates these new requirements into each county's existing contracting timetable:

> *This subparagraph shall become operative on January 1, 2026. Counties shall implement the requirements of this subparagraph in the next grant or selection cycle commencing on or after January 1, 2026.*

(2). ***A "D" is not an "A" when it comes to reunifying children with their moms or dads.*** Current law provides some overall quantitative performance measures for evaluating the success of county reunification programs, but they are, at best, inadequate. At worst, and in truth, they mask possibly dangerous problems by celebrating objectively poor performance as "successful," thereby foreclosing any inquiry on how to improve. For example, for a county's reunification program to be deemed "successful" under current law, at least 60% of children receiving services must remain in their home one year after the termination of services.[12] However, there are two huge problems with that metric:

- *The metric refers to the county's program as a whole and does not mandate particular qualifications or outcomes scrutiny for individual service providers*.[13]

Mathematically, just as a person can drown in a lake with an average depth of half an inch, the excellent performance of two county service providers could mathematically raise the overall average, masking stubbornly terrible performances of other individual providers.[14]

- *The metrics measure only catastrophic failure, not success*.

Under current law, if 39% of the time in a county, children who were returned home end up being removed again within one year, that overall result is decreed to be "successful." It isn't.

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[12] Welfare and Institutions Code section 16500.5(c)(5): "The program in each county shall be deemed successful if it meets the following standards: (D) During the first year after services are terminated: (i) At least 60 percent of the children receiving services remain at home one year after services are terminated."
[13] Welfare and Institutions Code section 16500.5(c),
[14] Take a class of ten students where four received 100 points out of 100 possible points on an exam. Presume three more received a score of 85, two scores of 30, and one a score of 10. The total is 725. Divided by 10, that results in an average of 72.5, a score that masks the poor performance of three of the ten students (the students who scored 30, 30, and 10).

A nearly 40% re-entry rate possibly indicates foundational problems, not success.

Overwhelmingly, child welfare involvement is prompted by third-party reports of abuse and neglect.[15] ***For a child to be removed from their home by child welfare services again within just one year of being returned home would mean that a new report by a teacher, physician, or other mandated reporter would have to be filed, investigated, a child welfare case worked up and filed with a court, a hearing held, and a child removed, all within twelve months. And, only in the worst cases are children removed from their homes.***

There are only two ways all this could happen in so short a time: (i) the report of abuse was so awful the child was removed on an emergency or nearly emergency basis, or (ii) reports from third parties were filed very soon after the child was returned home. If either of these is happening nearly 40% of the time in a county, that possibly reveals foundational problems with the services being provided to parents. It certainly does not warrant a program being celebrated as " successful," foreclosing all improving self-reflection and inquiry.

AB 3145 reforms this performance evaluation. A reunification program can be decreed to be "successful" if, when applied to each category, no more than 25 percent of children whose parents or guardians received services within one year ago are children who:

- *Are removed from the physical custody of their parents or guardians.*
- *Are determined to probably soon be within the juvenile court's jurisdiction.*
- *Have been adjudged wards of the court.*
- *Are families of children whose parents have limits placed on their control of their children.*
- *Are children who are determined to require out-of-home placement.*

Two years after reunifying, a county can decree its program to be a "successful" one if (i) no more than 10 percent of children whose parents or guardians received services are children who meet any of the circumstances listed above and (ii) no children who were returned home died or nearly died due to abuse or neglect.

When it comes to promoting the well-being of foster children, including ensuring they do not die on our watch, we should err on the side of promoting, not discouraging, discussions about how the services intended to keep families together and children out of foster care can improve.

[15] https://theacademy.sdsu.edu/wp-content/uploads/2015/01/understanding-cws.pdf.

MANY AMENDMENTS HAVE BEEN TAKEN AFTER COLLABORATIVE DISCUSSIONS WITH CWDA.

After many collaborative discussions with CWDA and at its request, the bill has been narrowed significantly from its introduced version. The amendments agreed to include:

- Entirely redrafting the bill's changes to Welfare and Institutions Code section 16500.5(C)(4) to clarify that the existing contracting standards requiring services be "reasonable and meritorious" and "shall demonstrate cost-effectiveness and success at avoiding out-of-home placement, or reducing the length of stay in out-of-home placement," simply apply to each provider with which a county contracts.

- Deleting the bill's confining definition of "family preservation services".

- Effective dates are extended to January 2026 and integrated into contracting cycles.

CONCLUSION: PLEASE SIGN AB 3145 (BRYAN).

Please sign AB 3145 (Bryan). Our parents and children deserve basic due diligence in tracking the quality of the services we pay for to help safely reunify them. It is the right thing to do for our families, our children, and our taxpayers.

Sincerely,

ED HOWARD
Senior Counsel, Children's Advocacy Institute