

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Alex Lee, Chair

AB 3049 (Bryan) – As Amended April 17, 2024

SUBJECT: Dependency: court hearings

SUMMARY: Includes nonminor dependents (NMDs) in specified entitlements for minors including the right to be present during a juvenile court hearing, and requires counsel for minors and NMDs to have sufficient personal contact to establish and maintain an adequate and professional attorney-client relationship. Specifically, **this bill:**

- 1) Expands the following existing entitlements for minors to include NMDs:
 - a) The right for those who are the subject of a juvenile court hearing to be present at the hearing;
 - b) The right to be represented at the hearing by counsel of their own choice; and,
 - c) The right, if present at the hearing, to address the court and participate in the hearing and specifies that nothing in this provision shall prevent or limit their right to attend or participate in the hearing.
- 2) Requires the court, if the minor or NMD participates in the hearing by virtual or telephonic means, to inquire as to whether the minor or NMD wished to be physically present at the hearing. Further requires the court, if the minor or NMD wishes to be physically present at the hearing, to continue the hearing to allow the minor or NMD to be physically present, unless the court finds that the continuance would be contrary to the interest of the minor or NMD.
- 3) Requires the court to also ask the minor or NMD, whether they are present at the hearing or participating by virtual or telephonic means, if they have had an opportunity to consult with their counsel. Requires the court, if the minor or NMD has not had an opportunity to consult with their counsel, to allow the minor or NMD an opportunity to consult with their counsel prior to proceeding with the hearing.
- 4) Requires, if the minor or NMD is not present at the hearing, the court to determine whether the minor or NMD had an opportunity to consult with their counsel. Requires the court to continue the hearing to allow counsel to personally contact the minor or NMD to assess their well-being and determine their wishes with respect to the issues presently before the court, unless the court finds that it is in the best interest of the minor or NMD not to continue the hearing, or that the minor or NMD waived their right to be physically present at the hearing. Requires the court to continue the hearing only for that period of time necessary to provide counsel with a reasonable amount of time to personally contact the minor or NMD. Specifies that nothing in this provision shall be construed to permit counsel to violate a minor's or NMD's attorney-client privilege.

- 5) Includes NMDs in the following provisions that already apply to minors 10 years of age or older, who are not present at the hearing, that require the court to do the following:
 - a) To also determine whether the NMD was properly notified of their right to attend the hearing and inquire whether the NMD was given an opportunity to attend; and,
 - b) If that NMD was not properly notified, or if they wished to be present and were not given an opportunity to be present, to continue the hearing to allow the NMD to be present unless the court finds that it is in the best interest of the NMD not to continue the hearing, or that the minor or NMD waived their right to be present at the hearing.
- 6) Requires the court to continue the hearing only for that period of time necessary to provide notice and secure the presence of the minor or NMD.
- 7) Authorizes the court to issue any and all orders reasonably necessary to ensure that the minor or NMD has an opportunity to attend.
- 8) Specifies that a court shall, if required by local rule, apply the rights described in 5) through 7) above to a minor under 10 years of age.
- 9) Provides that counsel for the minor or NMD or their agents are expected to meet regularly with their client, regardless of the age of the client or the client's ability to communicate verbally. Requires counsel for the minor or NMD to have sufficient personal contact with the minor or NMD to establish and maintain an adequate and professional attorney-client relationship.
- 10) Prohibits counsel from waiving the appearance of their client who is 10 years of age or older, unless counsel has received direction from the minor or NMD and counsel has interviewed the minor or NMD to determine their wishes and to assess their well-being. Specifies that a court shall, if required by local rule, apply the rights described in this provision to a minor under 10 years of age.

EXISTING LAW:

- 1) Establishes the juvenile court with jurisdiction over children who are subject to abuse or neglect. (Welfare & Institutions Code [WIC] § 300.)
- 2) Establishes that the purpose of the juvenile court dependency system is the 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. (WIC § 300.2.)
- 3) Provides for extended foster care funding for youth until age 21, as well as adopts other changes to conform to the federal Fostering Connections to Success Act. (WIC §§ 241.1, 303, 366.3, 388, 391, 450, 11400, 11402, 11403.)
- 4) Requires a social worker who files a dependency petition with the court to file a supplemental report prior to the initial petition hearing, and prior to subsequent review hearings, that sets forth the reasons why the child has been removed from the physical

custody of the parents or guardians and, in the case of subsequent review hearings, the reasons for returning or not returning the child to the physical custody of the parent or guardian. Requires the court to review the supplemental report and make findings, as specified. (WIC §§ 319(b), (f); 364(b); 366.21(c))

- 5) Gives a minor the right to be represented at the hearing by counsel of their own choice. (WIC § 349(b))
- 6) Provides that if the minor is present at the hearing, the court shall inform them that they have the right to address the court and participate in the hearing and the court shall allow the minor, if they so desire, to address the court and participate in the hearing. (WIC § 349(c).)
- 7) Requires the court, if the minor is 10 years of age or older and they are not present at the hearing, to determine whether the minor was properly notified of their right to attend the hearing and inquire whether the minor was given an opportunity to attend; if that minor was not properly notified or if they wished to be present and were not given an opportunity to be present, the court shall continue the hearing to allow the minor to be present, unless the court finds that it is in the best interest of the minor not to continue the hearing. The court shall continue the hearing only for that period of time necessary to provide notice and secure the presence of the child. (WIC § 349(d).)
- 8) Provides that the court may issue any and all orders reasonably necessary to ensure that the child has an opportunity to attend a juvenile court hearing about their case. (WIC § 349(d))
- 9) Requires, pursuant to court rule, that children's counsel "or their agents" meet regularly with their clients, regardless of their age; requires attorneys themselves to "have sufficient contact with the child to establish and maintain an adequate and professional attorney-client relationship"; and mandates that attorneys provide their contact information to their client's caregiver, as well as to children who are 10 years of age or older. (Rule 5.660(d), California Rules of Court.)

FISCAL EFFECT: This bill was keyed nonfiscal by the Legislative Counsel.

COMMENTS:

Background: *Child Welfare Services (CWS)*. California's CWS system was established with the goal of protecting youth from abuse and neglect and is designed to provide safety, health, and overall well-being of children. When a child is identified as being at risk of abuse or neglect, reports can be made to either law enforcement or a county child welfare agency. Often, these reports are submitted by mandated reporters who are legally required to report suspicion of child abuse or neglect due to their profession, such as a teacher or healthcare provider. When a mandated reporter submits a report to either law enforcement or the county child welfare agency, a social worker determines whether the allegation is of suspected abuse, neglect, or exploitation, and creates a case plan which includes the provision of relevant services. The child's social worker and the court collaborate to evaluate and review the circumstances of each case, seeking either reunification or placement outside of the home as a way for the child to achieve permanency.

The court will then determine whether the allegations are true and if the child can remain at home. If the court orders a child to be placed outside of the home, the parent usually receives court-ordered family reunification services. Upon completion of the services, in addition to making any changes or improvements described in the case plan, the court may dismiss the child's court case and the county welfare department case will also be closed. If a parent does not participate in the services set forth in the reunification plan, the court can terminate the services, and therefore change the reunification goal to one of finding a permanent home with a caring adult.

California's child welfare services programs are administered by the 58 individual counties with each county organizing and operating its own program of child protection based on local needs while adhering to state and federal regulations. When a child welfare case is open, counties are the primary governmental entity interacting with children and families when addressing issues of child abuse and neglect and are responsible, either directly or through providers, for obtaining or providing the interventions and relevant services to protect children and assist families with issues related to child abuse and neglect.

The California Department of Social Services (CDSS) secures federal funding to support child welfare services programs, provides statewide best practices training for social workers, and conducts program regulatory oversight and administration, and is responsible for the development of policy while also providing direct services such as adoption placements.

As of January 1, 2024, there are 43,633 youth between birth and 20 years of age in foster care in California.

Nonminor Dependents also known as Extended Foster Care. California was one of the first states to opt into the federal opportunity to create an extended foster care program which represented a historic expansion of services to foster youth and was intended to improve outcomes for youth, who often faced enormous challenges as they emancipated from the foster care system at 18 years of age often facing poverty, homelessness, and incarceration.

In 2010, Governor Schwarzenegger signed AB 12 (Beall), Chapter 559, Statutes of 2010, which extended foster care benefits for certain eligible youth until the age of 21. Prior to the adoption of AB 12, known as the Fostering Connections to Success Act, youth aged out of the CWS system at 18 years old and were required to navigate the challenges of young adulthood, including obtaining education, stable housing, and employment, without the support of the CWS system. In recognition of these difficulties, AB 12 provided eligible youth between 18 and 21 years of age, known as NMDs, with the services and supports they need to experience independent living in supervised living environments. Extended foster care also enables youth to obtain educational and employment training to better prepare them to transition to adulthood and self-sufficiency.

At the six-month hearing prior to a youth attaining 18 years of age, the youth's social worker or probation officer must have a plan to ensure that the youth will meet at least one of the following criteria for participation in extended foster care:

- 1) Be enrolled in a high school or equivalent program;
- 2) Be enrolled in a college, community college, or vocational program;
- 3) Be employed at least 80 hours a month;

- 4) Participate in a program or activity designed to remove barriers to employment; or,
- 5) Be unable to do one of the above requirements due to a medical condition.

NMDs must also sign an agreement to remain in foster care within six months of turning 18, reside in an eligible placement, and agree to work with their social worker to meet the goals of their transitional living plan.

For all intents and purposes, the CWS system treats NMDs similar to minors. This bill would bring parity in how courts handle their cases as well.

Dependency Court Procedure. When a child is removed from the custody of their parent, they are temporarily placed within the jurisdiction of the child welfare system until a determination about the child's welfare is made. Within 48 hours after a child is taken into temporary custody, the county social worker must file a petition with the court requesting that a detention hearing take place in order to determine if further detention of the child is necessary. If a petition to declare the child a dependent of the court is filed by the county social worker, then the detention hearing must be held within 48 hours of the petition being filed. At the detention hearing, the social worker outlines the allegations of abuse or neglect made against the parent and why it is necessary to remove the child from the custody of their parent. If the court determines that removing the child from their parents' custody is in the best interests of the child, the child is then removed. The permanent placement of the child is determined at a later date.

Once a child has been removed from the custody of their parents, a jurisdictional hearing must take place within 15 days. It is at the jurisdictional hearing that the court determines whether the allegations outlined in the social worker's petition are true. If the allegations are deemed to be true, then the child is determined to be within the jurisdiction of the juvenile court and a dispositional hearing must be held within 60 days of the initial detention hearing in order to determine the permanent placement of the child.

At the dispositional hearing, the court determines the parameters of the family reunification plan, which includes where and with whom the child will live, be it with relatives or in a foster family home. The reunification plan also can entail recommendations for parents such as parenting classes, anger management, counseling, substance use disorder counseling and testing, sexual abuse counseling, parenting training, and anger management.

Except for limited circumstances, if the child is not returned to the parent's custody at the 18-month permanency reviewing hearing, the juvenile court is required to terminate reunification services and set a hearing to terminate parental rights. The court then determines whether reasonable services have been offered or provided to the parent or legal guardian, but the court's authority to set the hearing to terminate parental rights is not conditioned on whether reasonable services were provided.

Courts appoint attorneys to represent minors and NMDs in the foster care system, but the Author and Sponsor state there are no rules in statute that guide their practice and there is no guarantee that when an attorney appears in front of a judge for a child that they've personally contacted or spoken to the child. This bill would clarify the requirements for counsel and court as well as expand the rights already afforded to minors to include NMDs who are involved in court proceedings.

Recent Reporting on Court-Appointed Attorneys. A recent investigative report was published on April 16, 2024, entitled *Out of Sight, Out of Mind When Children in Foster Care in California Don't Meet Their Court Appointed Attorneys* and was a collaboration by several organizations: Advokids, Western Center on Law and Poverty, and Akin Gump. The report presented findings from surveys of more than 1,000 caregivers and former foster youth, which revealed that two-thirds of children in California foster care have never met with their attorney and according to the Advokids Executive Director, “Our report sounds the alarm that most court-appointed attorneys in California fail the 45,000 children in foster care who depend on them to advocate for their protection, safety and well-being - posing real dangers to these children who do not receive the quality of legal advocacy promised under California law. There are currently no oversight measures in place to hold court appointed attorneys accountable for failing to meet with and advocate for their clients who are vulnerable children and youth who must have a voice in the courtroom. It is time to demand accountability.”

In response to this report, a coalition of dependency attorneys representing the following organizations: East Bay Children's Law Offices, Children's Law Center of California, Children's Legal Services of San Diego, Dependency Advocacy Center, Dependency Legal Services, and Law Foundation of Silicon Valley noted that, “While we appreciate the focus of the ‘Out of Sight’ report on the important role of children’s attorneys in the foster care system, and we agree oversight and accountability are critical to ensure children in every California county are provided high-quality multidisciplinary representation, the report is replete with misinformation and sweeping conclusions based on inaccurate data.”

Author’s Statement: According to the Author, “At any given moment, there are over 40,000 children in the foster care system in California. These children depend on their court-appointed counsel to help them navigate an often traumatic and confusing dependency process. But, in some counties across California, dependency attorneys are failing to meet with their clients before representing them in court and advocating for life-altering decisions that they claim are in the child’s best interests. [This bill] will expand existing judicial oversight over court-appointed dependency attorneys, requiring that a judge continue a hearing if they find that the child has not had an opportunity to consult their attorney. During periods of instability, a child’s attorney should be a reliable constant and advocate for them. This bill will bring accountability to the dependency court system and ensure that when decisions are made about a child in the foster care system, that decision is informed by the child’s own opinions and lived experiences.”

Equity Implications: The provisions of this bill seek to expand existing rights of children and young people in the foster care system ensuring they have the opportunity to consult with their attorneys if a presiding judge determines that they were not able to do so prior to a hearing. According to an April 3, 2024, publication by the Legislative Analyst's Office, entitled *Update: Racial and Ethnic Disproportionalities and Disparities in California’s Child Welfare System*, “The proportions of Black and Native American youth in foster care are around four times larger than the proportions of Black and Native American youth in California overall.” Because of the disproportionality that exists in the child welfare system, the provisions of this bill seek to ensure that these youth’s wishes are aligned with the actions of the dependency proceedings.

Double referral: This bill was previously heard in the Assembly Judiciary Committee on April 16, 2024, on consent and was approved on a 12-0 vote.

RELATED AND PRIOR LEGISLATION:

AB 217 (Maienschien), Chapter 36, Statutes of 2015, required the court to inform a minor, if the minor is present at the juvenile hearing, of their right to address the court and participate in the hearing.

REGISTERED SUPPORT / OPPOSITION:

Support

Advokids (Sponsor)
Allies for Every Child
California Alliance of Caregivers
California Youth Connection (CYC)
Children Now
Contra Costa Foster Friends
Extraordinary Families
FASD Network of Southern California
FASD Now! a California Alliance
Koinonia Family Services
Legal Services for Children
Marin Foster Care Association
Mariposa County Resource Parent Support Network
National Center on Adoption and Permanency
Our Village Closet
Sierra Child & Family Services
Western Center on Law & Poverty

Opposition

None on file.

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