

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Alex Lee, Chair

AB 2108 (Ramos) – As Amended April 1, 2024

SUBJECT: Foster care: missing children and nonminor dependents

SUMMARY: Requires, when a social worker (SW) or probation officer (PO) receives information that a foster youth is absent from foster care, the SW or PO to immediately notify specified persons. Specifically, **this bill:**

- 1) Requires, when an SW or PO receives information that a child receiving child welfare services is absent from foster care, the SW or PO to immediately, but no later than 24 hours from the receipt of that information, notify all of the following persons or entities if their whereabouts are known:
 - a) The child's or nonminor dependent's (NMD's) parents or legal guardian, unless notification has been limited or terminated by the court;
 - b) The attorney for the parents or legal guardians;
 - c) The child's or NMD's attorney of record;
 - d) The child or NMD's court-appointed special advocate, if one has been appointed;
 - e) The court of jurisdiction;
 - f) The child's or NMD's tribe or tribal representative, if the child is an Indian child, as defined;
 - g) Any known sibling of the child or NMD who is required to be notified of a hearing; and,
 - h) The local law enforcement agency.
- 2) Requires the notice to include an agency contact that noticed persons may reach for additional information.
- 3) Defines the following terms:
 - a) "Absent from foster care" means when the whereabouts of a child receiving child welfare services are unknown to the county child welfare agency or probation department (counties) or when the county child welfare agency or probation department has located the child receiving child welfare services in a location not approved by the court that may pose a risk to the child receiving child welfare services, taking into account the age, intelligence, mental functioning, and physical condition of the child receiving child welfare services.
 - b) "Child receiving child welfare services" means a child or NMD placed in an eligible foster care placement or in the home of an emergency caregiver, and includes

dependents, NMDs, and minors who have been taken into temporary custody and who are in foster care.

- 4) Includes NMDs in the requirement for counties to develop and implement specific protocols to expeditiously locate any child absent from foster care. Further specifies that these policies should describe the due diligence efforts used by county staff to expeditiously locate any child absent from foster care, including, but not limited to, the notification and the timeframe for reporting missing youth to interested parties as described in 1) above.
- 5) Makes findings and declarations related to the release of a 2022 audit by the United States Department of Health and Human Services Office of Inspector General (HHS-OIG) stating there are several barriers and other deficiencies in California agencies' policies and procedures related to missing foster youth.
- 6) States legislative intent to create stronger protections for youth when they are absent from foster care.

EXISTING LAW:

State law:

- 1) Establishes the juvenile court with jurisdiction over children who are subject to abuse or neglect. (Welfare & Institutions Code [WIC] §§ 300 *et seq.*)
- 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 that any minor between 12 and 17 years of age, inclusive, who violates any state or federal law or any city or county ordinance (except curfew ordinances based solely on age) falls under the jurisdiction of the juvenile court. (WIC §§ 602 *et seq.*)
- 4) Requires counties to develop and implement specific protocols to expeditiously locate any child or NMD missing from foster care and requires, at a minimum, these policies to do all of the following: describe the efforts used by county staff to expeditiously locate any child or NMD missing from care, including, but not limited to, the timeframe for reporting missing youth, the individuals or entities entitled to notice that a youth is missing, any required initial and ongoing efforts to locate youth, and plans to return youth to placement. (WIC § 16501.35(b)(1))
- 5) Requires SWs and POs to do all of the following:
 - a) Determine the primary factors that contributed to the child or NMD running away or otherwise being absent from care;
 - b) Respond to factors identified in a) above in subsequent placements, to the extent possible;
 - c) Determine the child's or NMD's experiences while absent from care;

- d) Determine whether the child or NMD is a possible victim of commercial sexual exploitation; and,
 - e) Document the activities and information described in a) to d) above, inclusive, for federal reporting purposes, consistent with instructions from the California Department of Social Services (CDSS). (WIC § 16501.35(b)(2))
- 6) Requires counties to implement policies and procedures that require SWs and POs to identify and document children receiving child welfare services who are, or are at risk of becoming, victims of commercial sexual exploitation; determine appropriate services for the child or youth, and receive relevant training in the identification, documentation, and determination of appropriate services for any child or youth identified. (WIC § 16501.35(a))
 - 7) Requires CDSS, in consultation with stakeholders, including, but not limited to, the County Welfare Directors Association of California, the Chief Probation Officers of California, former foster youth, and child advocacy organizations to develop model policies, procedures, and protocols to assist the counties in complying with this section. Requires CDSS to consult with the California Department of Education, the California Department of Health Care Services, state and local law enforcement, and agencies with experience serving children and youth at risk of commercial sexual exploitation in the development of the model policies and procedures described in 5) above. (WIC § 16501.35(c))
 - 8) Requires, if the court knows or has reason to know that the child is an Indian child, the Indian child to be detained in a home that complies with the placement preferences set forth in state law and the federal Indian Child Welfare Act of 1978 (ICWA) unless the court finds good cause exists not to follow the placement preferences. (WIC § 319(h)(1))
 - 9) Requires the court, when placing in the home of a relative, an extended family member, as defined in state law and federal ICWA, or a nonrelative extended family member (NREFM), to consider the recommendations of the SW based on the assessment of their home, including the results of a criminal records check and prior child abuse allegations, if any, before ordering that the child be placed with a relative or NREFM. (WIC § 319(h)(3))
 - 10) Requires, if the PO or SW determines that the child must be retained in custody, to immediately file a petition with the clerk of the juvenile court, who is required to set the matter for hearing, and requires the PO or SW to serve notice as prescribed to specified persons, including any known sibling of the child 10 years of age or older. (WIC § 290.1(a)(7))

Federal law:

- 1) Establishes ICWA, which provides guidance to states regarding the jurisdictional requirements, proceedings of tribal courts, and custody proceedings involving the removal of Indian children from their parents. (25 United States Code [U.S.C.] §§ 1901 *et seq.*)
- 2) Defines an “Indian child” to mean any unmarried person who is under 18 years of age and is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. (25 U.S.C §§ 1901 *et seq.*)
- 3) Establishes the federal foster care program, authorized by Title IV-E of the Social Security Act (SSA), to allow states to provide safe and stable out-of-home care for children who meet

certain eligibility requirements until they are safely returned home, placed permanently with adoptive families, or placed in other planned, permanent living arrangements. (42 U.S.C. § 471(a)(2))

- 4) Establishes the Fostering Connections to Success and Increasing Adoptions Act which amended Title IV-E of the SSA by giving states the option to extend the age of eligibility for federally funded foster care to the age of 21. (Public Law [P.L.] 110-351)
- 5) Requires state agencies to develop policies to quickly locate children who run away from foster care or who otherwise go missing. (42 U.S.C. §§ 471(a)(35)(A) and (B))
- 6) Mandates that each federal, state, and local law enforcement agency must promptly report each case of a missing child under the age of 21 to the National Crime Information Center (NCIC) of the Department of Justice. (34 U.S.C. § 41307)
- 7) Establishes the Preventing Sex Trafficking and Strengthening Families Act, which amended a number of provisions in the Titles IV-B and IV-E of the SSA, to authorize federal foster care programs, and added requirements for Title IV-E agencies to demonstrate that it has developed and implemented protocols to locate any child or NMD who has gone missing from foster care. (P.L. 113-183)

FISCAL EFFECT: Unknown, this bill has not been analyzed by a fiscal committee.

COMMENTS:

Background: *Child Welfare Services (CWS)*. California's CWS 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.

CDSS secures federal funding to support CWS programs, provides statewide best practices training for social workers, 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 October 1, 2023, there were 45,044 youth from birth up to 21 years of age in foster care in California.

United States Department of Health and Human Services Office of Inspector General. The HHS-OIG conducts audits and evaluations to assess the effectiveness of HHS programs and their grantees and contractors. These audit reports identify risks to the people served and taxpayers, and recommend necessary improvements. One such audit released in 2022, entitled *National Snapshot of State Agency Approaches to Reporting and Locating Children Missing from Foster Care*, examined protocols adopted by state agencies to report and locate missing children. Key findings of the report related to the existing protocols to expeditiously locate a youth absent from foster care found that there was inconsistent oversight and sporadic engagement from family members, tribes, and other supportive adults.

The 2022 report showed that California had the highest number of child deaths while missing. According to the 2022 report, one 15-year-old child was reported missing from California on January 25, 2019, and was found dead (of a suspected drug overdose) three days later on January 28, 2019, in Texas. While the report did not contain any recommendations, it did find that many states identified the need to find the correct placement to prevent children in foster care from running away as a challenge.

This bill is attempting to prevent such outcomes.

Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183) was signed into law in 2014. Children who go missing from their approved placements are at higher risk of experiencing harm, substance use, and trafficking. In recognition of the vulnerability associated with missing children, this federal law added requirements governing how state agencies respond when children are missing from foster care.

The Act requires states to develop and implement specific protocols for locating and ensuring the safety of youth missing from foster care and specifically requires states to develop and implement specific protocols for the following:

- Expediently locating any child missing from foster care;
- Determining the primary factors that contributed to the child's running away or otherwise being absent from care, and to the extent possible and appropriate, responding to those factors in current and subsequent placements; and,
- Determining the child's experiences while absent from care, including screening the child to determine if the child is a possible sex trafficking victim and reporting such related information, as required by the Secretary of HHS.

Federal laws require the state agency to report immediately, and no later than 24 hours after receiving information on missing or abducted children or youth, to the law enforcement authorities for entry into the NCIC database of the Federal Bureau of Investigation, and to the National Center for Missing and Exploited Children. The Act further requires counties to develop and implement protocols to locate children and NMDs who have gone missing from foster care.

The provisions of this bill align with the federal requirements related to the development of protocols and timelines in order to address missing foster youth.

California's Efforts to Align With Federal Law. As required to maintain federal child welfare funding, SB 794 (Committee on Human Services), Chapter 425, Statutes of 2015, brought the state into compliance with the federal Preventing Sex Trafficking, and Strengthening Families Act to conform state law to federal law related to sex trafficking prevention, among other areas.

In response to this legislation, CDSS was required to develop model policies, protocols, and procedures to assist counties in identifying and serving children who are at-risk for, or a victim of, commercial sexual exploitation. As a result, CDSS issued an All County Letter (ACL) 16-15 to provide instructions on these policies. The ACL noted that when the caregiver, SW, or PO first learns that a child has run away or is otherwise missing from care, the child should be immediately reported missing to the local law enforcement agency.

AB 2207 (Eggman), Chapter 757, Statutes of 2018, built off of this policy by requiring CDSS to develop model policies, protocols, and procedures to assist counties in identifying and serving children who are at risk for, or a victim of commercial sexual exploitation, by no later than January 1, 2020. CDSS issued ACL 20-105 on November 13, 2020, in order to provide counties with links to model policies, procedures, and protocols. This ACL also emphasized the importance of counties partnering with tribal governments in the development and implementation of these policies and protocols pertaining to exploited youth and urged counties to seek the participation of local tribal service providers, Indian Health Clinics, tribal law enforcement, tribal courts, and other branches of tribal government.

The ACL also stated that in the event that an Indian child is identified as missing from care, local law enforcement, including Tribal Police, must be notified immediately.

Dual Status Youth. When juveniles come into contact with both the child welfare and juvenile justice systems simultaneously, they are referred to as dual-status youth. Essentially, dual-status youth are under the jurisdiction of both the dependency court (child welfare system) and the delinquency court (juvenile justice system) at the same time, and as such, may interact with both an SW and PO. POs have specific responsibilities regarding the placement of and services for foster youth and NMDs who fall under the jurisdiction of the probation department. Their unique circumstances require coordinated efforts from both systems to effectively address their needs.

The provisions of this bill seek to bring county practices into compliance with both federal and state law, as well as the minimum standards guidance of CDSS, by enacting several specific requirements for SW or POs to notify specified people when they receive information that a foster youth is absent from foster care.

While current law requires counties to adopt policies that require a number of actions when an SW or PO determines that a youth is missing from foster care, the policies do not specifically require that law enforcement, the court with jurisdiction over the child, the child's family, the child's attorney, and the child's tribe or tribal representative (if applicable) are notified. Nor does the law provide a timeline for when such notifications must occur. This bill would address these considerations.

Author's Statement: According to the Author, "When foster children go missing, county practices are routinely out of compliance with the minimum California Department of Social Services guidance standards and both state and federal law. This negligence can lead to grave, life-changing, even fatal consequences for children. The potential risk is magnified for Native American children in the system who enter at a rate that is 2.7 times their representation in the population, the highest of any racial group. We can do better by our children by ensuring consistent implementation of best practices. This includes requiring notification to appropriate adults when a foster child is missing. Implementing effective, stabilizing and child/family supportive practices and policies will also assist California in confronting the crisis of Missing and Murdered Indigenous People. The Luke Madrigal Act, [this bill], is one critical element to addressing this issue."

Equity Implications: Advocates and stakeholders have reported that not all relevant parties are being noticed when a foster youth is missing from foster care and that protocols are not being enforced consistently across counties. For example, advocates have reported there are some counties with high numbers of Tribes who fail to mention them in their protocols. Tribes are also

reporting that they are not being consistently notified when an Indian child goes missing from foster care. This bill would require the SW or PO to notify all relevant parties.

This bill is also attempting to address the Missing and Murdered Indigenous Persons crisis. Tribal children who go missing or run away while in foster care are a critical population in the disproportionately high rates of Indigenous persons reported missing or suffering violence.

Data from the University of California, Berkeley California Child Welfare Indicators Project reports that 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. As a result, these youth are more likely to be removed from their homes due to poverty, substance use disorders, or other challenges. Tribal and native children are at an especially high risk of exploitation due to poverty, lack of protective services, and geographic isolation. For this population, going missing or running away while in foster care is a pipeline to the disproportionately high rates of violence and exploitation that are experienced by Native Americans, especially Native American women and youth.

According to a joint Information Memorandum from the U.S. HHS, children who go missing from foster care are vulnerable to crime and exploitation, which may result in physical harm and even death. The IM further notes that children and youth who are missing or have run away from foster care have a greater likelihood of experiencing adverse outcomes, including HIV infection, substance use disorders, academic underperformance, and involvement with the juvenile justice system. Research supports an association between running away from home and increased vulnerability to experiencing sexual exploitation and human trafficking. The National Center for Missing and Exploited Children estimates that 19% of children and youth who ran away from foster care likely experienced sex trafficking. With proper and consistent notification, all parties can collaborate to reduce the risk of abuse and sexual exploitation, which current federal and state laws were enacted to combat.

RELATED AND PRIOR LEGISLATION:

SB 998 (Rubio) of the current legislative session, requires SWs and POs to expand the policies and procedures related to foster youth who are, or are at risk of becoming, victims of labor trafficking. Defines “labor trafficking” to have the same meaning as forced labor, as defined in the Penal Code, and requires CDSS to revise the model policies and procedures to apply to victims of labor trafficking. *SB 998 is currently set for hearing in the Senate Human Services Committee on April 1, 2024.*

AB 273 (Ramos) of 2023, would have imposed specific requirements on SWs, POs, and juvenile courts when foster youth are missing from foster care to notify the youth's family and support systems about court hearings; safely return the youth to their placements; and, further protect these vulnerable youth. *AB 273 was vetoed by Governor Newsom who directed CDSS to work with the author and stakeholders to inform additional guidance, training, or recommend statutory changes to protect all foster youth, especially tribal youth.*

AB 2628 (Reyes) of 2022, would have changed the name of the Commercially Sexually Exploited Children Program to the Human Trafficked Children Program and would have revised all parts of the program to include all children who are victims of human trafficking, including those who are victims of child labor trafficking; would have modified provisions of WIC to include victims of forced labor under the jurisdiction of the dependency courts. Finally, AB 2628

would have directed CDSS to develop policies and resources tailored to the specific traumas of minors who are forced labor victims. *AB 2628 was held on the Assembly Appropriations Committee suspense file.*

AB 1985 (Blanca Rubio) of 2020, would have changed the name of the Commercially Sexually Exploited Children Program to the Human Trafficked Children Program, explicitly authorized a child who was a victim of labor trafficking, and whose parent or guardian failed to protect the child, to be adjudged a dependent of the juvenile court. AB 1985 would have required that the case plan for a child or NMD who is, or who is at risk of becoming, the victim of labor trafficking, to document the services provided to address that issue. *AB 1985 was referred to the Assembly Judiciary Committee but the hearing was canceled at the request of the author.*

SB 767 (Atkins) of 2017, would have authorized, as reliable corroborating information approved by the California Victim Compensation Board, the inclusion of evidence that a county child welfare caseworker who provides child welfare services has attested by affidavit that the individual was a victim of human trafficking. *SB 767 was referred to the Senate Human Services Committee but was not set for a hearing.*

AB 2207 (Eggman), Chapter 757, Statutes of 2018, placed a deadline of January 1, 2020, on the requirement in current law that CDSS, in consultation with stakeholders, must develop model policies, procedures, and protocols to assist counties to achieve certain goals related to the commercial sexual exploitation of youth receiving child welfare services.

SB 794 (Senate Human Services Committee), Chapter 425, Statutes of 2015, required counties, among other provisions, to implement policies and procedures to require SWs and POs to identify children receiving child welfare services, including dependents or wards in foster care, NMDs, dependents, and youth receiving services, who are, or are at risk of becoming, victims of commercial sexual exploitation and to document it in the Child Welfare Services/Case Management System and any other agency record.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance for Children's Rights (Co-Sponsor)
California Tribal Families Coalition (Co-Sponsor)
Cahuilla Band of Indians
California Alliance of Caregivers
California Partnership to End Domestic Violence
California Tribal Business Alliance
Habematolel Pomo of Upper Lake
John Burton Advocates for Youth
Picayune Rancheria of The Chukchansi Indians
Santa Ynez Band of Chumash Indians
Smart Justice California, a Project of Tides Advocacy
Strong Hearted Native Women's Coalition, INC.
Tejon Indian Tribe
Tule River Tribe
Yurok Tribe

Opposition

None on file.

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