

Date of Hearing: March 25, 2025

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Alex Lee, Chair

AB 373 (Blanca Rubio) – As Amended March 11, 2025

SUBJECT: Dependency proceedings: counsel

SUMMARY: Removes the exception, when counsel is appointed to represent a nonminor dependent (NMD), requiring counsel to be charged with representing the wishes of the NMD *except* when advocating for those wishes conflicts with the protection or safety of the NMD.

EXISTING LAW:

- 1) Defines “nonminor dependent” as a current foster youth or a nonminor under the transition jurisdiction of the court who is at least 18 and not more than 21 years of age, turned 18 years of age while under an order of foster care placement, is in foster care under the responsibility of the county welfare department, county probation department, or Indian tribe, and is participating in a transitional independent living plan, as specified. (Welfare and Institutions Code [WIC] § 11400(v))
- 2) Authorizes the court, when it appears that a parent, guardian, or Indian custodian, of the child desires counsel but is unable to afford and cannot for that reason employ counsel, to appoint counsel for the parent or Indian custodian. (WIC § 317(a)(1))
- 3) Requires the court, when it appears that a parent or guardian of the child is unable to afford and cannot for that reason employ counsel, and the child has been placed in out-of-home care, or the petitioning agency is recommending that the child be placed in out-of-home care, to appoint counsel for the parent or guardian, unless the court finds that the parent or guardian has made a knowing and intelligent waiver of counsel as provided. (WIC § 317(b))
- 4) Requires the court to appoint counsel for the child or NMD, if a child or NMD is not represented by counsel, unless the court finds that the child or NMD would not benefit from the appointment of counsel. Requires the court to state on the record its reasons for that finding. (WIC § 317(c)(1))
- 5) Requires a primary responsibility of counsel appointed to represent a child or NMD to be to advocate for the protection, safety, and physical and emotional well-being of the child or NMD. (WIC § 317(c)(2))
- 6) Allows counsel to be a district attorney, public defender, or other member of the bar, provided that they do not represent another party or county agency whose interests conflict with the child’s or NMD’s interests. Provides that the fact the district attorney represents the child or NMD in a proceeding pursuant to allegations of neglect and abuse as well as conducts a criminal investigation or files a criminal complaint or information arising from the same or reasonably related set of facts is not in and of itself a conflict of interest. (WIC § 317(c)(3))

- 7) Requires counsel to represent the parent, guardian, child, or NMD at the detention hearing and at all subsequent proceedings before the juvenile court. Requires counsel to continue to represent the parent, guardian, child, or NMD unless relieved by the court upon the substitution of other counsel or for cause. Requires the representation to include representing the parent, guardian, or the child in termination proceedings and in those proceedings relating to the institution or setting aside of a legal guardianship. Specifies, in the case of an NMD, no representation by counsel shall be provided for a parent, unless the parent is receiving court-ordered family reunification services. (WIC § 317(d))
- 8) Provides that counsel shall be charged in general with the representation of the child's interests. To that end, counsel shall make or cause to have made any further investigations that they deem in good faith to be reasonably necessary to ascertain the facts, including the interviewing of witnesses, and shall examine and cross-examine witnesses in both the adjudicatory and dispositional hearings. Authorizes counsel to also introduce and examine their own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child. Charges counsel, when counsel is appointed to represent an NMD, with representing the wishes of the NMD except when advocating for those wishes conflicts with the protection or safety of the NMD. Requires the court, if the court finds that an NMD is not competent to direct counsel, the court to appoint a guardian ad litem for the NMD. (WIC § 317(e)(1))

FISCAL EFFECT: This bill was keyed non-fiscal by the Legislative Counsel.

COMMENTS:

Background: *Extended Foster Care and Nonminor Dependents.* 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. Extending foster care to those who were over 18 years of age 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 and experienced poverty, homelessness, and incarceration at levels much higher than their non-foster youth peers.

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 child welfare system at 18 years of age and were required to navigate the challenges of young adulthood, including obtaining education, stable housing, and employment, without the support provided by the child welfare 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 years of age, reside in an eligible placement, and agree to work with their social worker to meet the goals of their transitional living plan.

This bill would require counsel that is appointed to represent an NMD during these hearings to be charged with representing their wishes in the same manner as any other adult client.

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, and sexual abuse counseling.

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.

Author's Statement: According to the Author, "[This bill] seeks to amend California Welfare and Institutions Code ("WIC") Section 317(e) to clarify that when counsel is appointed to

represent a nonminor dependent, the counsel's primary responsibility is to represent the wishes of the nonminor dependent, rather than acting solely as an advocate for their best interests."

Equity Implications: Foster youth are among our state's most vulnerable populations. Close to 31% of transition-age foster youth experience homelessness, another 25% come into contact with the justice system within two years of aging out of foster care and about 20% report having a health condition or disability that limits their daily activities. Only 50% complete their high school education, and less than 10% attain a college degree. California's foster youth population is disproportionately Black and Latino when compared to their non-foster youth peers. As a result, foster youth face significant barriers while in the system, and have even more challenges as they transition into adulthood and experience self-sufficiency. While foster youth in extended foster care face more obstacles than their non-foster youth peers, and are participating in a program to assist their transition to adulthood, they are still non-minors who have the capacity and right to have counsel who represents their wishes.

Double referral: This bill was previously heard in the Assembly Judiciary Committee on March 11, 2025, and was approved on a 9-0 vote.

RELATED AND PRIOR LEGISLATION:

AB 12 (Beall), Chapter 559, Statutes of 2010, see comments above.

AB 1712 (Beall), Chapter 846, Statutes of 2012, enacted numerous technical, clarifying, and federal conformity changes to the California Fostering Connections to Success Act of 2010.

AB 1909 (Ammiano), Chapter 849, Statutes of 2012, required schools to notify a foster youth's attorney and representative of the county child welfare agency of pending expulsion or other disciplinary proceedings.

SB 926 (Runner), Chapter 132, Statutes of 2011, authorized counsel for the child or counsel's agent to disclose to a relative who is being assessed for the possibility of placement of the child the fact that the child is in custody and other related information.

REGISTERED SUPPORT / OPPOSITION:

Support

California Youth Connection (CYC) (Co-Sponsor)
Children's Law Center of California (Co-Sponsor)
California Alliance of Caregivers
Children Now
John Burton Advocates for Youth

Opposition

None on file.

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