

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Lisa Calderon, Chair
AB 1140 (Robert Rivas) – As Introduced February 18, 2021

SUBJECT: Foster care: rights

SUMMARY: Specifies that children who are in state-licensed foster facilities and homes in the federal custody of the Office of Refugee Resettlement (ORR) of the federal Department of Health and Human Services are included among those who the Office of the State Foster Care Ombudsperson is responsible for, among other things, investigating and attempting to resolve complaints; additionally, specifies that residential facilities and foster homes for children in the custody of the ORR of the federal Department of Health and Human Services are included among those facilities who the California Department of Social Services (CDSS) is required to ensure that accord children and nonminor dependents (NMDs) in foster care their personal rights.

- 1) Includes residential facilities and foster homes for children in the custody of ORR under the purview of CDSS; further, provides that the department is responsible for ensuring that children and NMDs in foster care are accorded their personal rights.
- 2) Clarifies that investigations and attempts to resolve complaints made by or on behalf of children placed in foster care, related to their care and placement, includes providing services to children in state-licensed residential facilities and foster homes in the custody of ORR.

EXISTING LAW:

- 1) Establishes a state and local system of child welfare services, including foster care, for children who have been adjudged by the court to be at risk of abuse and neglect or to have been abused or neglected, as specified. (Welfare and Institutions Code Section [WIC] 202)
- 2) States that the purpose of foster care law is to provide maximum safety and protection for children who are currently being physically, sexually, emotionally abused, neglected, or exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm. (WIC 300.2)
- 3) Requires CDSS to ensure that a facility licensed, and a home certified or approved by a foster family agency to provide foster care, accord children and NMDs in foster care their personal rights, as specified. (Health and Safety Code [HSC] Section 1530.91(c))
- 4) Establishes the Office of the State Foster Care Ombudsperson within CDSS. (WIC 16161)
- 5) States Legislative intent to preserve and strengthen a child's family ties whenever possible and to reunify a foster youth with their biological family whenever possible, or to provide a permanent placement alternative. (WIC 16000)
- 6) Requires the Office of the State Foster Care Ombudsperson to investigate and attempt to resolve complaints made by or on behalf of children placed in foster care related to their care, placement, or services. (WIC 16164 (a)(2))

- 7) Provides the rights of all minors and nonminors in foster care, as specified. (WIC 16001.9)
- 8) Provides the state's policy to facilitate proper placement of every child in residential care facilities where placement is in the child's best interests, as specified. (HSC 1501.1 (a))
- 9) Clarifies the purpose of provisions regarding dependent children as to provide the maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, neglected, or exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm. (WIC 300.2)
- 10) Provides that for the purposes of state law, "unaccompanied undocumented minor" (UUM) will reference the federal legal term "unaccompanied alien children," as specified. (WIC 13300(c))
- 11) Requires CDSS to contract, as specified, with qualified nonprofit legal services organizations to provide legal services to UUMs who are transferred to the care and custody of the federal ORR and who are present in the state. (WIC 13300 (a))
- 12) Establishes the "California Community Care Facilities Act" and requires CDSS to administer and license community care facilities providing non-medical services. (HSC 1500 *et seq.*)
- 13) Defines "community care facility" to mean any facility, place, or building that is maintained and operated to provide non-medical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, individuals with physical disabilities or mental impairments and abused or neglected children. (HSC 1502 (a))

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

COMMENTS:

Child Welfare Services (CWS): California's CWS system was established with the goal of protecting youth from abuse and neglect. The system works through collaboration to provide for the 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, reports are submitted by mandated reporters who are legally required to report any suspicion of child abuse or neglect due to their profession. 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.

The child's social worker and the court collaborate throughout evaluating and reviewing the circumstances of each individual's case. As of October 1, 2020, there were 60,045 youth placed in the state's child welfare system in total. As California begins the road to recovery from the COVID-19 pandemic, many youth who have been isolated will make their way back to classrooms and communal settings, allowing mandated reports to resume contact and creating an anticipated spike in reports of abuse and neglect.

Continuum of Care Reform (CCR): In recent years, California has enacted legislation, known as CCR, to improve placement and treatment options for youth in foster care. AB 403 (Stone),

Chapter 773, Statutes of 2015, sponsored by CDSS, sought to improve outcomes for children and youth served by the CWS system by working to ensure that foster youth have their day-to-day physical, mental, and emotional needs met, that they have the opportunity to grow up in permanent and supportive homes, and have the opportunities necessary to become self-sufficient and successful adults. CCR also sought to reduce the use of congregate care as a frequently used placement option for youth, as data have demonstrated that youth placed in congregate care settings experience poorer outcomes than youth placed in family settings. Subsequent legislation to further facilitate implementation of CCR efforts include AB 1997 (Stone), Chapter 612, Statutes of 2016, AB 404 (Stone), Chapter 732, Statutes of 2017, AB 1930 (Stone), Chapter 910, Statutes of 2018, AB 819 (Stone), Chapter 777, Statutes of 2019, and AB 2944 (Stone), Chapter 104, Statutes of 2020.

Unaccompanied undocumented minors in the Child Welfare System: Youth separated from their family at the border are initially detained by California Border Patrol Officials. In 1997, a class action lawsuit based on the story of a young girl who had been detained at the border resulted in the Flores settlement agreement. This agreement established minimum standards for initially-detained children and required ORR to partner with the state department responsible for the administration of the facilities where UUMs reside. The Flores Settlement Agreement additionally gives state's responsibility of ensuring the safety and well-being of immigrant youth in state-licensed facilities.

Special Immigrant Juvenile Status (SIJS): SIJS is a classification used by federal immigration to help undocumented youth remain in the country under specified protections. SIJS was established in 1990 at the federal level and has been expanded upon by several states to allow access to services for immigrant children, including allowing for lawful permanent resident status. Under the Trafficking Victims Protection Reauthorization Act, any unmarried undocumented individual under age 21 who has been abused, neglected, or abandoned by a parent and has been declared a dependent of the juvenile court or been committed to the custody of specified entities may seek SIJS classification. Through current requirements, a large portion of UUMs within California would qualify for SIJS; however, many are unaware of the application process regulations and do not receive their right to service.

CDSS Unaccompanied Undocumented Minors Legal Services Funding: Under current law, CDSS is authorized to provide funding to qualified nonprofit organizations for representation and services provided to UUMs. Financing is available to support nonprofits that provide legal assistance with benefit and service program applications and eligibility that may be available to immigrant youth. Within the populations that these nonprofits may provide services to are those who qualify as SIJS, those seeking asylum, and specified visas. Despite the funding currently available to support these efforts, immigrant youth populations continue to grow along with the need for legal assistance.

COVID-19 Pandemic: In March 2020, Governor Gavin Newsom declared a statewide state of emergency in response to the global COVID-19 pandemic. With over 500,000 deaths resulting from coronavirus across our country, the impact of this virus has touched almost every aspect of everyday life. We have watched as the effects of COVID-19 have added strain on California's public programs, healthcare system, and the financial security of many.

Early into 2020, it became evident that communal settings were hotspots for infection. Conditions in detention centers were of concern well before COVID-19; however, these

environments' nature leaves them vulnerable to outbreaks, increasing the health risks to those detained substantially. Based on these data, litigation required the Superior Court of California to reduce several facility populations, including prisons, immigration detention centers, and ORR shelters. Attorneys that assisted with the release of those under the custody of the United States Immigration and Customs Enforcement or ORR argued that these entities failed to comply with their obligations under the Flores Settlement Agreement in their response to the pandemic. Specifically, children in ORR shelters for more than 20 days were ordered to be released immediately into sponsor custody to reduce health risks.

Need for this bill: This bill would clarify that the State Foster Care Ombudsman is responsible for investigating and resolving complaints for children in the custody of ORR that are housed within state-licensed facilities. Throughout the last few years, the Legislature has made its intent to protect the safety and well-being of all children a priority through CCR and other groundbreaking policy. This bill would ensure UUMs under federal custody receive the same access to report complaints of abuse and neglect as all California foster youth do, bringing parity to law.

According to the author, "Thousands of unaccompanied children cross our border fleeing poverty and violence, and many of them are temporarily taken into federal custody in state-licensed childcare facilities. California's foster care system lacks explicit protections for unaccompanied immigrant children, which leaves them particularly vulnerable. This bill addresses this vulnerability by clarifying the law under existing federal and state law authority to guarantee that this group of children will not be overlooked and underserved by the State during a time of desperate need."

Double referral: This bill will be referred to the Assembly Judiciary Committee should it pass out of this committee.

PRIOR AND RELATED LEGISLATION:

AB 829 (Levine) of 2021, requires counties to make their best efforts to provide undocumented immigrant minors and NMDs with immigration legal services and requires specified reports be submitted to CDSS on undocumented youth's needs in their county. AB 829 is set to be heard in the Assembly Human Services Committee on April 7, 2021.

AB 317 (Patterson) of 2021, requires the State Foster Care Ombudsperson to be appointed by the Secretary of California Health and Human Services rather than the Director of CDSS. AB 317 is set to be heard in the Assembly Human Services Committee on April 7, 2021.

AB 163 (Garcia, Rubio) of 2019, would have required CDSS to create a facilities liaison position within the immigration services unit to assist undocumented immigrant youth in state-licensed residential facilities and programs. AB 163 was held on the Senate Appropriations Committee suspense file.

SB 873 (Senate Committee on Budget and Fiscal Review), Chapter 685, Statutes of 2014, required CDSS, subject to the availability of funding, to contract with qualified nonprofit legal services organizations to provide legal services, including culturally and linguistically appropriate services, to UUMs, as defined, who are transferred to the care and custody of the federal ORR and who are present in the state.

REGISTERED SUPPORT / OPPOSITION:**Support**

Immigrant Defense Advocates (Co-Sponsor)
Immigrant Legal Resource Center (Co-Sponsor)
Kids in Need of Defense (KIND) (Co-Sponsor)
Legal Services for Children (Co-Sponsor)
National Center for Youth Law (Co-Sponsor)
Vera Institute of Justice (Co-Sponsor)
Youth Law Center (Co-Sponsor)
African Advocacy Network
Al Otro Lado
Alliance for Children's Rights
American Civil Liberties Union/Northern California/Southern California/San Diego and Imperial Counties
American Immigration Lawyers Association - San Diego Chapter
Anne and Henry Zarrow School of Social Work
API Legal Outreach
Asian Americans Advancing Justice - Asian Law Caucus
Bay Area Health and Legal Partnerships for Immigrant Youth and Families
Bet Tzedek Legal Services
Burma Refugee Families & Newcomers
California Alliance of Child and Family Services
California Catholic Conference
California Chapter 1, American Academy of Pediatrics
California Collaborative for Immigrant Justice
California Immigrant Policy Center
California Rural Legal Assistance Foundation (CRLA Foundation)
Californians Together
Center for Gender & Refugee Studies
Center of Excellence for Immigrant Child Health and Wellbeing, UCSF Benioff Children's Hospitals
Central American Resource Center - Carecen Sf
Central American Resource Center- Carecen- of California
Centro Legal De LA Raza
Children Now
Children's Law Center of California
Church World Service
Coalition to Abolish Slavery & Trafficking (CAST)
Communities United for Restorative Youth Justice
Community Action Board of Santa Cruz County
Community Action Marin
Community Legal Services of East Palo Alto
Courage California
Disability Rights California
Dolores Street Community Services
Dreamer Fund
East Bay Refugee and Immigrant Forum

East Bay Sanctuary Covenant
Education and Leadership Foundation
Ella Baker Center for Human Rights
Empowering Pacific Islander Communities (EPIC)
Esperanza Immigrant Rights Project, Catholic Charities of Los Angeles INC.
Food Empowerment Project
Friends Committee on Legislation of California
Haywood Burns Institute
Immigrant Defenders Law Center
Immigrant Legal Defense
Immigrant Legal Services of The Central Coast
Indivisible Sacramento
Initiate Justice
International Rescue Committee
Jewish Family Service of San Diego
John Burton Advocates for Youth
Justice and Diversity Center of The Bar Association of San Francisco
LA Raza Centro Legal
LA Raza Community Resource Center
Law Foundation of Silicon Valley
Long Beach Immigrant Rights Coalition
Los Angeles Center for Law and Justice
National Immigration Law Center
NorCal Resist
Open Immigration Legal Services
Orange County Equality Coalition
Pangea Legal Services
Pomona Economic Opportunity Center
Project Lifeline
Public Counsel
Restaurant Opportunities Centers of California
San Francisco Immigrant Legal Defense Collaborative
San Joaquin College of Law - New American Legal Clinic
Santa Cruz Barrios Unidos
Secure Justice
Sierra College Undocumented Student Center
Soccer Without Borders
Social Justice Collaborative
Street Level Health Project
TEACH
Thai Community Development Center
The Children's Partnership
UCSF Health and Human Rights Initiative
University of San Francisco Immigration & Deportation Defense Clinic
USC Gould School of Law Immigration Clinic
Verity
Vidas Legal Services and Comite
Women's Foundation California
Young Women's Freedom Center

Opposition

None on file

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