

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

AB 1324 (Levine) – As Introduced February 22, 2019

SUBJECT: Foster children: immigration counsel

SUMMARY: Requires social workers to report to the juvenile court a description of efforts made to help an undocumented immigrant minor obtain legal counsel and immigration relief and requires the California Department of Social Services (CDSS) to, if funding is available for this purpose, contract with qualified nonprofit legal services organizations to provide legal services to undocumented immigrant children in the child welfare services system. Specifically, **this bill:**

- 1) Makes Legislative findings and declarations related to circumstances facing undocumented youth who are in, or who emancipate from, foster care.
- 2) States Legislative intent to create accountability in ensuring that foster youth who emancipate from foster care have received all immigration relief to which they are entitled, and to identify a source of funding to enable counties to provide immigration counsel to all youth in foster care.
- 3) Requires, in all cases in which an undocumented immigrant minor is adjudged a dependent child of the court, as specified, the social worker to include in all reports made regarding the child to the court a description of the efforts made to assist the minor with obtaining legal counsel and any immigration relief to which the minor is entitled, and the status of any immigration matter concerning the minor.
- 4) Requires CDSS, subject to the availability of funding, to contract with qualified nonprofit legal services organizations to provide legal services to undocumented immigrant children in foster care and subject such contracts to the following requirements:
 - a) Be executed only with nonprofit legal services organizations that either: have at least three years' experience handling Special Immigrant Juvenile Status cases and have represented at least 25 individuals in these matters; or, have at least three years' experience representing minors in dependency cases and have access to training and technical support on immigration matters;
 - b) Provide legal services on a fee-per-case basis, as specified;
 - c) Require reporting, monitoring, or audits of services provided, as determined by CDSS; and,
 - d) Require contractors to maintain adequate legal malpractice insurance and to indemnify and hold the state harmless from any claims that arise from the legal services provided, as specified.
- 5) Makes technical changes.

EXISTING LAW:

- 1) Permits the juvenile court to adjudge a child a dependent of the court for specified reasons, including, but not limited to, if a child has suffered or is at substantial risk of suffering serious physical harm, emotional damage, or sexual abuse, as specified. (Welfare and Institutions Code Section [WIC] Section 300)
- 2) States that the purpose of foster care law is to provide 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)
- 3) Declares the intent of the Legislature to, whenever possible, preserve and strengthen a child's family ties and, when a child must be removed from the physical custody of their parents, to give preferential consideration to placement with relatives. States the intent of the Legislature to reaffirm its commitment to children who are in out-of-home placement to live in the least restrictive family setting and as close to the child's family as possible, as specified. Further states the intent of the Legislature that all children live with a committed, permanent, nurturing family and states that services and supports should be tailored to meet the specific needs of the individual child and family being served, as specified. (WIC 16000)
- 4) Requires out-of-home placement of a child in foster care to be based upon selection of a safe setting that is the least restrictive family setting that promotes normal childhood experiences and the most appropriate setting that meets the child's individual needs, as specified. Further, requires the selection of placement to consider, in order of priority, placement with: relatives, nonrelative extended family members, and tribal members; foster family homes, resource families, and approved or certified homes of foster family agencies; followed by intensive services for foster care homes or multidimensional treatment foster care homes or therapeutic foster care homes; group care placements in the order of short-term residential therapeutic programs, group homes, community treatment facilities, and out-of-state residential treatment, as specified. (WIC 16501.1(d)(1))
- 5) Defines "unaccompanied undocumented minor" in state law to mean the same as "unaccompanied alien children" in federal law, which defines an unaccompanied alien child to mean a child who has no lawful immigration status in the United States, had not yet reached 18 years of age, and with respect to whom either there is no legal parent or guardian in the United States, or no parent or legal guardian in the United States is available to provide care and physical custody. (WIC 13300(c) and Title 6 of United States Code, Section 279(g)(2))
- 6) Requires CDSS to contract, as specified, with qualified nonprofit legal services organizations to provide legal services to unaccompanied undocumented minors who are transferred to the care and custody for the federal Office of Refugee Resettlement and who are present in the state and establishes requirements for those contracts, as specified. (WIC 13300, 13301)

FISCAL EFFECT: Unknown

COMMENTS:

Child Welfare Services: In California during calendar year 2017, almost 500,000 children had allegations of child abuse or neglect made regarding them. Of these children, approximately 71,000 (14%) had allegations that were substantiated, and 28,000 (40% of children with substantiations) were removed from their homes and entered foster care via the state’s Child Welfare Services (CWS) system. (However, children who have reports of abuse or neglect substantiated but are not removed from the home may also receive, along with their families, family maintenance services; these services may in some instances be ordered by the court and, in others, based upon a voluntary agreement with the parent where the courts is not involved. Family maintenance services typically involve a social worker working with a family in the home to prevent and remedy abuse and neglect, and can include a variety of services such as counseling, parent education, respite care, substance use disorder treatment, domestic violence intervention, and victim services.)

The CWS system serves to protect children from abuse and neglect, and to provide for their health and safety. When a county juvenile court finds that a youth is subject to or at substantial risk of maltreatment warranting their removal from the home, the court holds legal jurisdiction over the youth. A youth is served by the CWS system through the appointment of a social worker, and many opportunities exist during which the custody of the youth, or their placement outside of the home, must be evaluated, reviewed and determined by the judicial system, in consultation with the youth’s social worker, to help provide the best possible services to the youth. When a youth has been removed from the home, the goal of the CWS system is, often, to reunify them with their parents or guardians, whenever appropriate. When a youth’s reunification with their family is not appropriate, the second highest placement priority of the CWS system is to place youth with other relatives or nonrelative extended family members. Youth may also be placed in foster homes – referred to as “resource family” homes – overseen by either the county or a foster family agency. Specialized placement and service options also exist for youth with significant behavioral health and other needs; these placements and related services can include, among other options, specially trained intensive services foster care resource families, and intensive, temporary placement in short-term residential therapeutic programs, which are replacing group homes under significant changes adopted in recent years per the state’s Continuum of Care Reform (CCR). As of October 1, 2018, there were 59,487 children in California’s child welfare system.

Special Immigrant Juvenile Status: Congress created the Special Immigrant Juvenile Status in 1990 to provide immigration relief for immigrant children who have experienced maltreatment. Certain undocumented immigrant youth who need the protection of the juvenile court due to abuse, neglect, abandonment, or related circumstance may be able to seek lawful permanent residence in the United States through obtaining Special Immigrant Juvenile Status. To be eligible, an undocumented youth needs to be under 21 years old and unmarried, and: have been declared a dependent of the juvenile court or been committed to the custody of certain individuals or entities, be unable to reunify with their parent(s) because of maltreatment, and have had it determined that it would not be in their best interest to return to their home country.

CDSS Unaccompanied Undocumented Minors Legal Services Funding: CDSS is authorized, in current law, to award funding to qualified nonprofit legal services organizations for the provision of services to unaccompanied undocumented minors. This funding is required to be used solely to provide legal representation for unaccompanied undocumented minors. Culturally

and linguistically appropriate legal services for state court proceedings, federal immigration proceedings, and any related appeals are provided by attorneys, paralegals, interpreters, and other support staff. Legal representation is offered for various immigration statuses, including Special Immigrant Juvenile Status, asylum, certain visas, and other remedies. For Fiscal Year 2018-19, CDSS allocated \$2.9 million to fund legal services for unaccompanied undocumented minors; this money was awarded to 23 nonprofit organizations with a combined caseload of 580.

Need for this bill: This bill seeks to connect undocumented immigrant minors in the state's child welfare services system with legal counsel and immigration relief, including acquisition of Special Immigrant Juvenile Status. It is difficult to know how many youth this bill might impact; while CDSS reports that the Child Welfare Services/Case Management System (CWS/CMS) has an immigration status field, caseworkers are not required to fill in this field. Of the 63% of files in CWS/CMS where immigration status was reported during the three-year period 2016-18, 1,400 children were reported to be undocumented.

According to the author, "The federal Special Immigrant Juvenile Status (SIJS) was created to help abused and neglected undocumented children obtain lawful permanent residency in the United States, and in turn, provide greater stability for these young people that have experienced trauma. Currently, almost all undocumented children in foster care qualify for immigration relief but that relief is difficult to obtain without legal assistance.

"SIJS was established in 1990 in order to protect foster youth unable to reunify with their families. SIJS might be the only route for an undocumented foster child to gain lawful permanent immigration status in the United States. Although not all children qualify for SIJS, almost all children in foster care qualify. Undocumented children who leave foster care without applying for SIJS will be unable to successfully transition to adulthood in the United States.

"[This bill] requires the California Department of Social Services to contract with nonprofit legal services organizations to provide immigration legal services to undocumented children in foster care. This bill will ensure that undocumented children in California's foster care system are provided with essential immigration legal services necessary to seek lawful residency in the United States."

Staff comments: In California, youth in the child welfare services system are eligible, if certain conditions are met, for continued receipt of services up until they turn 21 as participants (referred to as "nonminor dependents") in Extended Foster Care. Special Immigrant Juvenile Status is also available to youth up until age 21, and other immigration remedies are available to eligible individuals in this age group. In order to ensure that nonminor dependents are also eligible to receive the benefits offered to minor foster youth by this bill, should this bill move forward, ***committee staff recommends that the author include language clarifying that the provisions of this bill impacting undocumented immigrant minors in the child welfare services system also include undocumented nonminor dependents.***

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

PRIOR LEGISLATION:

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 non-profit legal

services organizations to provide legal services, including culturally and linguistically appropriate services, to unaccompanied undocumented minors, as defined, who are transferred to the care and custody of the federal Office of Refugee Resettlement and who are present in the state.

REGISTERED SUPPORT / OPPOSITION:

Support

Children's Law Center of California (Sponsor)
Alliance for Children's Rights
American Academy of Pediatrics, California
California Alliance of Child and Family Services
Children Now
Children's Legal Services of San Diego
National Center for Youth Law
Sacramento CASA

Opposition

None on file

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