

Date of Hearing: February 26, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES  
Eloise Gómez Reyes, Chair  
AB 175 (Gipson) – As Amended February 4, 2019

**SUBJECT:** Foster care: rights

**SUMMARY:** Expands, clarifies, and revises the rights of foster youth found in current statute under the Foster Youth Bill of Rights. Specifically, **this bill:**

- 1) Expands and recasts state law on the rights of minors and nonminors in foster care, as follows:
  - a) Expands and revises the current requirement for foster youth to receive adequate food, clothing, and, for youth in group homes, an allowance by: including the right to receive grooming and hygiene products regardless of sexual orientation and gender identity and expression; expanding the right to an allowance to all youth regardless of placement type; and specifying that the allowance be age-appropriate;
  - b) Includes substance abuse disorder services among other currently required health-related resources to be provided to foster youth, and specifies that these health-related resources should be provided in a timely fashion that meet the needs of the youth;
  - c) Specifies that the current right to freedom from the administration of medication or chemical substances, as specified, shall be without consequences or retaliation;
  - d) Expands the list of individuals a foster youth has the right to contact to include access to health providers and education rights holders, includes the right to be provided with the names and contact information of the specified list of individuals, and specifies that foster youth have the right to contact these individuals in a confidential manner;
  - e) Includes other family members and relatives within the right to visit and contact siblings, as specified in current law.
  - f) Stipulates that the right to contact certain state officials regarding violation of rights, as specified in current law, shall be granted immediately upon request;
  - g) Adds the right to attend cultural services and activities of one's choice;
  - h) Removes the specification that the right to maintain a bank account applies only to emancipation bank accounts;
  - i) Adds sexual orientation and gender identity and expression as factors with which the school and activities a youth has a right to attend and participate in, as specified, must be consistent;
  - j) Clarifies that foster youth have the right to not be restricted from attending Independent Living Program classes and activities as a consequence or punishment;

- k) Changes from 12 years old to 10 years old the age after which a foster youth has the right to review their own case plan and plan for permanent placement;
  - l) Includes medical and vital records among the records listed in current law that shall not have the gender or sex listed therein considered in a foster youth's right to out-of-home placement according to gender identity;
  - m) Adds the right to be placed with a relative or nonrelative extended family member if an appropriate and willing individual is available;
  - n) Includes the right, unless a court states otherwise, to be placed in the least restrictive environment possible, irrespective of identity, as specified;
  - o) Extends the right of foster youth to have certain personnel who have received instruction on providing adequate care, as specified, to lesbian, gay, bisexual, or transgender youth to include probation personnel and legal counsel;
  - p) Adds the right for youth to be referred to by their preferred name and gender pronoun;
  - q) Includes the right of foster youth to maintain the privacy of their lesbian, gay, transgender, queer, and questioning status and gender identity, with certain exceptions, as specified;
  - r) Changes from 12 years old to 10 years old the age after which a foster youth has the right to access age-appropriate, medically accurate information about reproductive healthcare, the prevention of unplanned pregnancy, and the prevention and treatment of sexually transmitted infections;
  - s) Specifies that until 26 years of age, all foster youth have the right to review and receive copies of personal records, as specified; and,
  - t) Adds the right to have reasonable access to computer technology and the internet.
- 2) Makes other technical changes to existing law.

**EXISTING LAW:**

- 1) States that the purpose of foster care law is to provide maximum safety and protection for children who are currently being neglected, exploited, and/or physically, sexually, and emotionally abused and to ensure the safety of children who are at risk of that harm. Specifies that safety, protection, and physical and emotional well-being may include the provision of social and health services to help the child and family and a balanced focus on the health and well-being of the child along with the preservation of the family. (Welfare and Institutions Code [WIC] Section 300.2)
- 2) Declares the intent of the Legislature to, whenever possible preserve and strengthen a child's family ties and ensure that if the child is removed from their family, the state shall work to secure as nearly as possible for the child the custody, care, and discipline equivalent to that which should have been given to the child by their parents. Further, 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 setting and as close to the child's family as possible, as specified. (WIC 16000)

- 3) Enumerates rights of minors and nonminors in foster care, including but not limited to the right to: live in a safe, healthy, and comfortable home where they are treated with respect; be free from any abuse, including physical, sexual, emotional, or corporal punishment; receive adequate and healthy food, clothing, and, for youth in group homes, an allowance; receive medical, dental, vision, and mental health services; attend religious services and activities of their choice; be involved in the development of their own case plan and plan for permanent placement; and review their own case plan and plan for permanent placement, if they are 12 years of age or older and in a permanent placement, and receive information about their out-of-home placement and case plan, including being told of changes to the plan. (WIC 16001.9)
- 4) Requires care providers that provide foster care for children to provide each school-age child who is placed in foster care and the child's representative, with an age and developmentally appropriate orientation that includes an explanation of the rights of the child and addresses the child's questions and concerns, as specified. (Health and Safety Code Section 1530.91 (a))

**FISCAL EFFECT:** This bill has been keyed non-fiscal by the Legislative Counsel.

**COMMENTS:**

***Child Welfare Services:*** The purpose of California's Child Welfare Services (CWS) system is to protect children from abuse and neglect and provide for their health and safety. When children are identified as being at risk of abuse, neglect or abandonment, county juvenile courts hold legal jurisdiction; these children are served by the CWS system through the appointment of a social worker. Through this system, there are multiple opportunities for the custody of the child, or their placement outside of the home, to be evaluated, reviewed and determined by the judicial system, in consultation with the child's social worker, to help provide the best possible services to the child. The CWS system seeks to help children who have been removed from their homes reunify with their parents or guardians, whenever appropriate. However, the court may determine that an alternate permanent placement is more fitting and give preference to relatives or nonrelative extended family members. There are currently close to 60,000 children and youth in California's CWS system.

***Foster Youth Bill of Rights:*** AB 899 (Liu), Chapter 683, Statutes of 2001, adopted California's Foster Youth Bill of Rights and required: social workers and probation officers to periodically inform children of these rights in an age-appropriate manner; the Office of the State Foster Care Ombudsperson (Office) to, in consultation with stakeholders, develop and disseminate information on these rights; and any facility licensed to provide foster care for six or more children to post a listing of these rights. Two previous bills — AB 2923 (Bates) of 1994 and SB 1974 (Watson) of 1996 — had sought to codify the rights of children in foster care but were vetoed by then-Governor Pete Wilson. Proponents of AB 899 acknowledged that regulations at the time contained a number of rights of foster children, but they argued that the lists of these rights tended to vary and were not conveyed consistently to foster youth. Staff of the Office also acknowledged at the time that most of the rights contained in AB 899 were consistent with those provided by the Office to youth, but the Office struggled to uniformly convey this information.

The Office also pointed to the lack of a clear process of accountability when youth were not provided with this information.

The Foster Youth Bill of Rights has been amended to add and clarify rights over time, most recently with AB 2119 (Gloria), Chapter 385, Statutes of 2018, which clarified that a foster youth's right to be involved in the development of their own case plan and plan for permanent placement includes, but is not limited to, the development of case plan elements related to placement and gender affirming health care, with consideration of gender identity. The current list of rights for all minors and nonminors in foster care includes 27 enumerated rights, such as the right to: live in a safe, healthy, and comfortable home where they are treated with respect; be free from any abuse, including physical, sexual, emotional, or corporal punishment; receive adequate and healthy food, clothing, and, for youth in group homes, an allowance; receive medical, dental, vision, and mental health services.

***Need for this bill:*** This bill is a follow-up to AB 1067 (Gipson), Chapter 851, Statutes of 2016, which directed the California Department of Social Services (CDSS) to convene a working group regarding the rights of foster youth and nonminor dependents, and made the working group responsible for, among other things, issuing recommendations to the Legislature for revising those rights, based on a review of state law, by January 1, 2018. According to the author, “I have heard many stories from young people in my district and around California that detail the challenges foster youth face as they struggle in out-of-home placements, have their education disrupted, and lose access to critical resources. My bill in 2016, AB 1067, directed the Department of Social Services to convene a working group to consider revising the Foster Youth Bill of Rights and make recommendations to update its provisions. The Department has worked with stakeholders statewide, including the California Youth Connection, to ensure any proposed revisions are strongly influenced by foster youth and advocates. 18 years ago, the challenges that foster youth faced were different than they are today and it is critical that their rights evolve in the Bill of Rights, accordingly.”

***Support:*** Writing in support of this bill, the American Civil Liberties Union of California states that, “Transgender and gender non-conforming (TGNC) youth are significantly overrepresented in California’s foster care system. According to a study conducted by UCLA’s Williams Institute, of the 7,400 foster-youth located in Los Angeles County, 11.1% identify as gender non-conforming and 5.6% as transgender. These young people are an incredibly vulnerable population. Last year’s AB 2119 made explicit the right of these youth to access gender affirming care, and [this bill] expands TGNC foster youth’s enumerated rights by adding the right to access appropriate health care, grooming, and hygiene products; keep their LGBTQ status private; be referred to by their preferred name and gender pronoun; and have probation personnel and legal counsel who have received LGBTQ cultural competency and sensitivity instruction for their overall wellbeing. [This bill] will continue to modernize the Foster Youth Bill of Rights to address the needs of TGNC foster youth.”

***Opposition:*** Some parties opposing the bill take issue with, among other things, its inclusion of a foster youth’s right to be referred by their preferred name and gender pronoun. For example, writing in opposition to this bill, the California Family Council states that, “This bill puts Christian foster parents in an impossible position, because this bill compels them to violate their faith by using a foster child’s pronoun of preference. Either the foster parents remain faithful to their biblical beliefs about the biological/binary nature of gender and violate this law, or they violate their faith by affirming the gender preferences of their foster children. This is going to

push more Christian foster parents out of the system, when foster parents are already in short supply. In addition to this, our legal advisors say that compelling the use of certain pronouns disregards the free speech rights of foster parents by requiring them say something they don't agree with.”

**Staff comments:** This bill is intended to adopt the recommendations put forth by the working group convened by CDSS in compliance with AB 1067. Those recommendations are still forthcoming; CDSS reports that it is hopeful that they will be made available in the coming months. Committee staff acknowledge that, ideally, the recommendations would be released prior to the crafting of implementing legislation; however, staff also recognize the desire of the author, and other stakeholders, to not further delay efforts to update the Foster Youth Bill of Rights. While the report on recommendations has yet to be released by CDSS, the author’s office – having closely followed the work of the workgroup and conferred with key participants – expresses confidence that this bill reflects the recommendations of the workgroup. ***Should this bill move forward, committee staff would encourage the author to continue to consult CDSS about, and monitor the release of, the recommendations in order to ensure that this bill best reflects the work and intentions of the working group convened as a result of AB 1067.***

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

#### **PRIOR LEGISLATION:**

AB 2119 (Gloria), Chapter 385, Statutes of 2018, codified that minors and nonminors in foster care have access to gender affirming health care and gender affirming behavioral health services, if requested.

AB 1067 (Gipson), Chapter 851, Statutes of 2016, required CDSS to convene a working group to develop standardized information about the rights of all minors and nonminors in foster care, as specified.

AB 899 (Liu), Chapter 683, Statutes of 2001, adopted California’s Foster Youth Bill of Rights.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

American Civil Liberties Union of California  
California Teachers Association

##### **Oppose**

American College of Pediatricians  
California Catholic Conference Inc.  
California Family Council  
Eagle Forum of California  
One private citizen

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