

Date of Hearing: March 28, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Corey A. Jackson, Chair

AB 369 (Zbur) – As Introduced February 1, 2023

SUBJECT: Foster care: independent living

SUMMARY: Expands the upper age eligibility of the Independent Living Program (ILP) from up to 21-years old, to include youth up to 23-years old. Removes the reference to a \$10,000 limit on the amount of cash savings a foster youth is permitted to accrue in order to receive aid in the form of federal Aid to Families with Dependent Children-Foster Care (AFDC-FC). Specifically, **this bill:**

- 1) Requires the California Department of Social Services (CDSS), with the approval of the federal government, to amend the foster care state plan and the child welfare services state plan to allow all eligible youth up to 23 years old to be served by the ILP.
- 2) Requires CDSS, by June 30, 2025, to complete a comprehensive evaluation of the existing ILPs with the intent of updating and upgrading curriculum, requiring services and supports to be trauma-informed, relevant, and timely to facilitate greater self-sufficiency and transition to independence.
- 3) Requires the evaluation to be completed in consultation with county ILP administrators, placement agencies, providers, advocacy groups, and community groups. Requires the consultation to result in an update and expansion of the standards and requirements for ILPs in order to increase consistency across counties.
- 4) Requires, by June 30, 2026, county ILPs to update and expand the standards and requirements for the ILP to increase consistency in ILPs across counties, while retaining some flexibility in services and supports delivered by local ILPs based on the needs of current and former foster youth and nonminor dependents (NMDs) served by ILPs.
- 5) Strikes reference to the \$10,000 limit on the amount of cash savings foster youth who are participating in a transitional independent living case plan (TILP) are permitted to retain in order to be eligible to receive aid in the form of federal Aid to Families with Dependent Children (AFDC).
- 6) Clarifies that resources are not to be evaluated after the initial determination for the same foster care to determine continued eligibility for a foster care maintenance payment.
- 7) Establishes eligibility for an NMD who reenters foster care to receive AFDC-FC if all other specified criteria are met.
- 8) Makes findings and declarations related to the ILP services intended to help eligible transition-aged foster youth build daily living skills, including financial management, educational support, employment assistance, mentoring, and preventive health activities to aid in the transition to adulthood, while noting that California has not availed itself of the option to extend ILP to former foster youth up to 23 years of age.

- 9) States legislative intent to ensure that services and supports that assist transition age youth in attaining their education and employment goals are trauma informed, relevant, and timely in order to facilitate their transition to from foster care to successful adulthood.

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 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, with the approval of the federal government, permit all eligible children to be served by the ILP until age 21. (WIC 10609.3(d))
- 4) Delineates responsibilities for CDSS in the development and administration of the ILP. (WIC 10609.4)
- 5) Specifies regulations governing the ILP in California. (Manual of Policy and Procedures 31-525 *et seq.*)
- 6) Provides for extended foster care funding for youth until 21 years of age, and adopts other changes to conform to the federal Fostering Connections to Success Act. (WIC 241.1, 303, 366.3, 388, 391, 11400, 11402, 11403)
- 7) Defines a “nonminor dependent” as a current or former foster youth who is between 18 and not more than 20 years of age, in foster care under the responsibility of the county welfare department, county probation department, or Indian tribe, and participating in a TILP. (WIC 11400(v))
- 8) Requires aid in the form of AFDC-FC to be provided on behalf of any child under 18 years of age, and to any NMD who meets specified conditions. (WIC 11401)
- 9) Requires counties to review the child’s or NMD’s payment amount annually, to include an examination of any circumstances of a foster child or NMD that are subject to change and could affect the potential eligibility or payment amount, including, but not limited to, authority for placement, eligible facility, and age. (WIC 11401.5)
- 10) Allows NMDs who meet general AFDC-FC requirements, as well as one or more of a set of specified requirements, to voluntarily continue placement in or to re-enter into foster care. (WIC 11403(b))
- 11) Establishes relevant definitions for purposes of AFDC-FC. (WIC 11400)
- 12) Enumerates specified eligibility requirements for AFDC-FC funding. (WIC 11402)

- 13) Allows a nonminor former foster youth under the age of 21 to petition the court for re-entry into foster care if their guardian or adoptive parent is no longer providing them with support and no longer collecting benefits on behalf of the youth. (WIC 388.1)
- 14) Prohibits, in addition to the personal property permitted by other provisions, a dependent child, who is 16 years of age or older, or, an NMD who is participating in a TILP, to retain resources with a combined value of not more \$10,000, consistent with Section 472(a) of the federal Social Security Act (42 U.S.C. Sec. 672(a)) as contained in the federal Foster Care Independence Act of 1999 (Public Law 106-169) and the child's transitional independent living plan. (WIC 11155.5)

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

COMMENTS:

Background: *Child Welfare Services (CWS):* California's CWS system was established with the goal of protecting youth from abuse and neglect and is designed 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, these reports are submitted by mandated reporters who are legally required to report suspicion of child abuse or neglect due to their profession, such as a teacher or physician. 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 to evaluate and review the circumstances of each case, seeking either reunification or placement outside of the home as a way for the child to achieve permanency.

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, and 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, 2022, there were 53,371 youth between the ages of 0 and 21 in foster care. Below are the outcomes for NMDs exiting foster care, who could potentially be served by an expanded ILP, broken down by quarter for the age range 20 to 21:

- October 2021 – December 2021 = **639**
- January 2022 – March 2022 = **993**
- April 2022 – June 2022 = **499**

- July 2022 – September 2022 = **432**
- October 2022 – December 2022 = **426**

Total NMD exits from October 2021 to December 2022 = 2,989

Extended foster care: As a result of the passage of AB 12 (Beall), Chapter 559, Statutes of 2009, foster youth between the ages of 18 and 20 years of age, also known as NMDs, are eligible for extended foster care. Extended foster care is a benefit available to eligible youth to assist them to achieve self-sufficiency and includes educational opportunities, employment trainings, and supervised independent living environments.

When an NMD ages out of extended foster care at 21, state law provides for various exit requirements to ensure the youth are provided with all the necessary information to thrive in their transition to adulthood. This bill would expand the option to participate in an ILP to youth between the ages of 21 up to their 23rd birthday to ensure they have the appropriate skills to lead an independent life.

This bill would allow foster youth who age out of extended foster care to still participate in the ILP, even though they will technically be considered former foster youth due to their age.

Independent Living Program: The purpose of the ILP is to provide program services and activities as described in the youth's TILP to assist eligible youth to live independently. California's ILP, funded by the federal John H. Chafee Foster Care Program for Successful Transition to Adulthood, provides supportive services to transition age youth who have been in foster care. Through the ILP, youth learn about budgeting, postsecondary financial aid, and securing employment, among other relevant topics. Counties are permitted to use a portion of ILP funds for housing-related supports, including transitional housing.

Currently youth are eligible for ILP services up until their 21st birthday provided one of the following criteria is met:

- Were/are in foster care at any time from their 16th to their 19th birthday.
- Were/are 16 years of age up to 18 years of age and in receipt of the Kinship Guardianship Assistance Payment Program (KinGap) assistance.

According to current regulations, each county is responsible for administering an ILP that allows the core services to be provided through various means consistent with each youth's goals, as outlined in their TILP. These services can originate from the county, a contractor, social works or other organizations that have programs geared toward helping youth gain the skills needed to be successful in adulthood.

While this bill aims to increase consistency across counties among the different services and supports, the ILP is a voluntary program for eligible youth, so it is not the expectation that all eligible youth will choose to receive their services through participation in the county-offered ILP

As of February 15, 2022, the federal Administration of Children and Families (ACF) reported 34 states and territories opted into increasing the age for ILP up to age 23.

Foster care payments and eligibility determinations. AFDC-FC is the aid provided on behalf of needy children in foster care who meet the eligibility requirements as specified in department regulations and in applicable state and federal laws.

Under AFDC-FC, counties provide payments to foster care providers on behalf of qualified children in foster care according to a schedule of basic rates, administered by CDSS, to pay for the care and supervision of each foster child.

Funding to provide for the needs of youth in California's foster care system is provided by either the state or federal government. In order to be eligible for the federal AFDC, also referred to as Title IV-E funding, the home from which a foster youth was removed must meet AFDC eligibility criteria from 1996. Because the criteria to receive federal AFDC funding is rarely met, California created AFDC-FC, which blends state and county funds to provide for youth who are otherwise ineligible for AFDC.

Current law in the Welfare and Institutions Code states that \$10,000 is the resources threshold for federal AFDC-FC eligibility, but advocates claim that counties have been interpreting this to mean that youth in foster care lose eligibility for all foster care payments if they exceed \$10,000 in savings when these youth are still eligible for state AFDC-FC.

To clarify this provision of law, CDSS issued an All County Letter (ACL), ACL 22-16, that said, "Consistent with ACL 11-10, an eligibility redetermination is not required when a minor child or nonminor dependent (NMD) in foster care receives income or property after the initial linkage determination has been completed. In other words, if a youth in foster care receives income (e.g. through an inheritance or receipt of tribal trust fund), that income is not to be evaluated and has no impact on the youth's continued eligibility for AFDC-FC benefits."

The ACL further states that, "If a child in an authorized foster care placement is determined ineligible for a federal IV-E foster care payment for any reason (income/resources/deprivation standards), they are otherwise eligible to receive aid in the form of AFDC-FC, but without federal financial participation in the payment. Any provisions of the Manual of Policies and Procedures (MPP) conflicting with this guidance will be amended in an upcoming regulations package."

In an effort to avoid confusion, this bill strikes the reference to \$10,000 altogether.

In 2022, a two-year extension was provided for the payments of interim rates in the AFDC-FC program, under which counties provide payments to foster care providers on behalf of qualified children in foster care. Current law requires CDSS to administer a state system for establishing rates in the AFDC-FC program, and to implement a rate structure that is effective through December 31, 2022, for specified rates paid to certified family homes of a foster family agency, short-term residential therapeutic programs, and foster family agencies that provide treatment, intensive treatment, and therapeutic foster care programs.

As described by CDSS in ACL 22-16, due to a 2010 change in federal law, annual re-determinations are no longer required by ACF and, effective February 15, 2022, to income and resources are not to be evaluated after the initial determination for the same foster care episode in order to determine continued eligibility for an AFDC-FC payment.

ACF describes a foster care episode as a removal with one or more placement settings. A previous episode is one that has been completed by a discharge. A current episode is a removal and one or more placement settings without a discharge. This means if a foster youth exits care upon reunification or permanent placement, is discharged, and then re-enters foster care at a later date, that will be considered another episode of foster care.

This bill is placing that clarification into statute by striking the \$10,000 limit on the amount of resources a dependent or NMD is allowed to accrue in order to be eligible for AFDC-FC payments.

Author’s Statement: According to the author, “[This bill] will support foster youth and reduce their vulnerability to homelessness by extending eligibility for Independent Living Program services, clarifying that youth can save money to help them transition into independent adulthood, and requiring the state to consider how the Program can better serve these young people.”

Need for this bill: This bill seeks to address homelessness and improve outcomes among foster youth by extending the amount of time they can participate in the ILP and clarifying that youth are still eligible for state AFDC regardless of the amount of cash savings they have accrued. Transition age youth who turn 21 face an abrupt end to the services and support they have received as a result of being in foster care. Unlike their non-foster youth peers, these youth do not have the benefit of relying on their biological family for financial and emotional support to assist them with their transition to adulthood.

Equity Implications: The provisions of this bill are focused on youth in foster care, who are disproportionately people of color and identify as LGBTQ+. Children of color, and specifically Black and Native American children, continue to experience disparities at every stage of the child welfare system: maltreatment reports, investigations, case substantiations, service referrals, out-of-home placements, family reunification, termination of parental rights, and time spent in foster care.

Recent research suggests that LGBTQ+ youth are overrepresented in unstable housing and foster care and face poorer treatment while in the system and lower rates of achieving permanency, as well as bleaker outcomes after they age out, including lower educational attainment and higher odds of homelessness and financial instability.

By extending access to the ILP to former foster youth until they turn 23 years old, those who have already experienced the trauma of being removed from their homes would be granted additional time to achieve self-sufficiency through training on daily living skills, money management while being directed toward housing resources. While this additional access can potentially help all foster youth, it can have a particularly deep impact on the marginalized population within foster care as they seek stability and independence.

RELATED AND PRIOR LEGISLATION:

AB 866 (Blanca Rubio) of 2023, requires CDSS to establish a state-funded program to provide food assistance for NMDs who are residing in a SILP or a transitional living setting. *AB 866 is pending in the Assembly Human Services Committee and is set for hearing on March 28, 2023.*

AB 2306 (Cooley) of 2022, would have expanded eligibility for the ILP to include current and former foster youth up to 22 years of age. *AB 2306 was vetoed by Governor Newsom.*

AB 640 (Cooley), Chapter 622, Statutes of 2021, authorized counties to petition the juvenile court on behalf of certain NMDs to terminate dependency or transition jurisdiction over the youth and immediately re-establish jurisdiction in order to establish the NMD's eligibility for federal financial participation; expanded the definition of a voluntary re-entry agreement to include an agreement between an NMD who has not signed a voluntary re-entry agreement after attaining 18 years of age and for whom a petition to terminate jurisdiction will be filed.

AB 12 (Beall), Chapter 559, Statutes of 2010, established California's extended foster care program to allow foster youth to remain in foster care until reaching 21 years of age.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance for Children's Rights (Co-Sponsor)
California Coalition for Youth (Co-Sponsor)
Children Now (Co-Sponsor)
Aspiranet
California Alliance of Caregivers
California Youth Connection (CYC)
Children's Law Center of California
First Place for Youth
Pathways LA
Public Counsel

Opposition

None on file

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