

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

AB 395 (Blanca Rubio) – As Amended April 3, 2019

SUBJECT: Child abuse or neglect: foster children

SUMMARY: Places a number of requirements on procedures and components of investigations of allegations of child abuse or neglect in certain community care facilities serving foster youth conducted by the California Department of Social Services (CDSS) and any another agency with oversight authority, as specified. Specifically, **this bill:**

- 1) Requires a timely investigation to be completed in instances when CDSS or another agency with oversight authority over certain community care facilities serving foster youth, as specified, becomes aware of an allegation of child abuse or neglect.
- 2) Requires CDSS or the oversight agency to cooperate with other agencies, as specified, to coordinate existing duties in connection with the investigation of suspected child abuse or neglect, and, further, allows the agencies to work together to avoid duplicative interviews of the alleged victim or other individuals to reduce trauma and promote efficiency.
- 3) Requires the investigation by CDSS or the oversight agency to be assigned to an investigator who is not the analyst or social worker who licensed or approved the facility or home, or the social worker assigned to the case, or any other party with a possible conflict of interest.
- 4) Requires CDSS or any other oversight agency investigation to include, but not be limited to, all of the following, as specified:
 - a) A face-to-face interview in private with the suspected victim of child abuse or neglect, that, if deemed necessary or appropriate, shall be a forensic interview, and, further, requires all parties involved in investigating reports of child maltreatment, whenever practical, to observe the interview, which shall be digitally recorded;
 - b) A face-to-face interview with any other child who is believed by the investigator to have knowledge of the alleged incident of child abuse or neglect, and, further, requires, if the child is no longer placed in the home or facility in which the alleged abuse or neglect occurred, the investigator to make reasonable and diligent efforts to locate that child, and, further, encourages the investigator to contact the parent about interviewing the child, as specified;
 - c) An interview with any adults residing in, or staff present at, the facility at the time of the alleged incident of abuse or neglect who are believed by the investigator to have knowledge of the alleged incident of abuse or neglect;
 - d) Interviews with other individuals who may have knowledge of abuse or neglect, including the alleged victim's teachers and doctors;
 - e) A review of all past complaints concerning the home or facility and the findings and resolution of those complaints; and,

- f) A review of the frequency of caseworker visits with the suspected victim of child abuse or neglect during the year of placement in which the alleged abuse or neglect occurred.
- 5) Requires an investigator, to the best of their ability, to maintain the privacy of all minors and nonminor dependents involved in the investigation.
- 6) Requires an interview with the suspected victim of abuse or neglect and any other children be conducted separate and apart from the suspected offender, and, further, prohibits the interview from taking place in the location where the alleged abuse or neglect occurred, or in a location where the suspected offender of the alleged abuse or neglect is present.
- 7) Requires an investigation conducted by CDSS or the oversight agency to be completed no later than 45 days after receiving notice of the allegation of abuse or neglect, subject to an extension of 45 days upon supervisory review and approval.
- 8) Requires a supervisor to provide in the investigation report a written explanation of why the extension is being granted and what actions have been taken in the investigation at the point of granting the extension.
- 9) Prohibits a child from being placed in the home or facility as long as the investigation remains uncompleted and a determination has not been made.
- 10) Requires the approving agency or the licensing agency to send a copy of its investigation report to the Office of the State Foster Care Ombudsperson (Office), and, further, requires the Office to review a representative sample of the investigations annually and include determinations of the extent to which the investigations complied with the investigation protocols.
- 11) Allows the Office to make recommendations for the improvement of the protocols based on the determinations.
- 12) Requires CDSS to, at a minimum, annually report to the Legislature and post on its internet website a statewide summary of the investigations conducted pursuant to the provisions of this bill, as specified.
- 13) Restates requirements in existing law that mandate any report of abuse or neglect of a youth be responded to with the same emergency protocols as any other report, and, further, restates the requirements of mandated reporters to make a report to the appropriate agency designated to receive mandated reports for intake and evaluation of risk, as specified.
- 14) Specifies that certain agencies, including law enforcement and county welfare departments, who receive a report of alleged child abuse or neglect from a mandated reporter must also notify the agency with oversight over the home, as specified.
- 15) Requires certain entities authorized to receive mandated reports to develop and implement protocols with licensing offices and agencies with oversight responsibilities over homes and facilities for coordinating investigations of alleged child abuse and neglect involving children under the jurisdiction of the juvenile court.

16) Includes the Office among the list of entities to whom reports of suspected child abuse or neglect, and certain information, may be disclosed, but limits this access to instances in which the reported incident of child abuse or neglect involves a foster youth and occurred in a community care facility, as specified.

17) Deletes outdated language from statute and makes technical changes.

EXISTING LAW:

- 1) Defines a mandated reporter as an individual required to report suspected or known instances of child abuse and neglect, and includes, teachers, social workers, probation officer, firefighters, and physicians, among others. (Penal Code [PEN] Section 11165.7 (a))
- 2) Requires reports of suspected child abuse or neglect to be made by mandated reporters to certain entities, including any police department or sheriff's department, county probation department, or the county welfare department, as specified. (PEN 11165.9)
- 3) Requires a mandated reporter to make a report to an agency whenever the mandated reporter has knowledge of or observes a child who has been the victim of child abuse or neglect, as specified. (PEN 11166)
- 4) Requires, when an entity receives a report of suspected abuse or neglect from a mandated reporter, the entity to notify the licensing office with jurisdiction over the facility of certain information, as specified. (PEN 11166.1 (a))
- 5) Establishes the Community Care Facilities Act, which allows for the licensure and oversight of out of home placements for abused and neglected children by CDSS. (Health and Safety Code [HSC] Section 1500 *et seq.*)
- 6) Includes in the definition of "child welfare services" the provision of "emergency response services," which consist of a response system providing in-person response, 24 hours a day, seven days a week, to reports of abuse, neglect, or exploitation for the purpose of an investigations, and to determine the necessity for providing initial intake services and crisis intervention to maintain the child safely in their home, or to protect the safety of the child, as specified. Further requires county welfare departments to respond to any report of imminent danger to a child immediately and all other reports within 10 calendar days, with certain exceptions, as specified. (Welfare and Institutions Code [WIC] Section 16501 (a)(2) and (f))
- 7) Defines a "community care facility" as any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and includes: residential facilities, adult day programs, foster family agencies, group homes, and children's crisis residential programs, among others. (HSC 1502 *et seq.*)
- 8) Establishes the Community Care Licensing Division (CCLD) within CDSS and requires CDSS to license group care facilities, private foster family agencies, and foster family homes in order to place children who are in the child welfare system. (HSC 1502 and 1522)

- 9) Establishes the Office of the State Foster Care Ombudsperson in order to provide children who are placed in foster care with a means to resolve issues related to their care, placement, or services. (WIC 16160 *et seq.*)

FISCAL EFFECT: Unknown

COMMENTS:

Child Welfare Services: California's Child Welfare Services (CWS) system exists to protect children from abuse and neglect, and in doing so, to provide for their health, safety, and overall well-being. When suspicions of abuse or neglect arise, often as a result of a report by a mandated reporter like a doctor or teacher, Child Protective Services is tasked with investigating the report. If the allegation of abuse or neglect is substantiated, it is then determined whether it is in the best interest of the child to remain in their parent's custody or be placed within the CWS system. If a child is suspected to be at risk of neglect, abuse, or abandonment, the juvenile court holds legal jurisdiction, and the CWS system appoints a social worker to ensure that the needs of a youth are met. As of October 2018, there were 59,487 youth between the ages of 0 and 21 placed in California's CWS system.

Community Care Licensing Division (CCLD): Within CDSS is the CCLD, which is responsible for licensing and investigating complaints against facilities that fall within its jurisdiction, such as Residential Care Facilities for the Elderly (RCFEs), child care facilities, and out-of-home placements for foster youth, among others. Typically these facilities provide non-medical care and supervision for adults and youth in need by providing adult care services, early childhood education (child care), foster care and shelter services, and residential care for seniors or individuals with developmental disabilities. CCLD is also responsible for ensuring these facilities comply with all applicable laws and regulations, as well as overseeing any investigations resulting from non-compliance, and any corrective actions taken as a result of those investigation.

When allegations of abuse or neglect are made within a licensed foster care facility, CCLD licensed program analysts (LPAs) are tasked with determining whether a violation of law occurred. If a violation of law is determined to have occurred, the allegation is prioritized according to the following priority codes:

- a) Priority I: Allegations such as sexual abuse with penetration of the genitals or physical abuse resulting in great bodily injury.
- b) Priority II: Allegations such as sexual abuse that involve sexual behavior (without penetration) or physical abuse resulting in minor injuries or bruises.
- c) Priority III: Allegations such as physical abuse with no injuries or bruises, or neglect or lack of supervision by a licensed facility, facility employee, volunteer, and the like.
- d) Priority IV: Allegations such as physical/corporal punishment, such as spanking, or lack of supervision that did not result in any abuse or injury, unsanitary conditions, and other regulatory violations.

When a complaint has been recorded and assigned to one of CCLD's five regions, the Investigations Branch may choose to either: accept the investigation and fully investigate the

allegation; reject a complete investigation and inspect specific parts of the allegation; or reject the investigation and return it to a regional licensing office to investigate.

When an analyst begins an investigation, the facility's files are reviewed with regards to compliance and complaint histories, and the LPA attempts to contact the individual who filed the complaint to obtain any additional information that may be relevant to the investigation. Within 10 days of receiving a complaint, the LPA performs an unannounced initial onsite inspection at the facility during which the analyst explains the purpose of the inspection, reviews files, conducts interviews, and tours the facility. The analyst also attempts to interview as many witnesses related to the allegation as possible during the course of their investigation, including the children who are alleged victims, as well as any medical records, law enforcement reports, and photographs related to the abuse allegation. Once an investigation is completed, the allegation is deemed unfounded, inconclusive, or substantiated; in the event of substantiation, citations against the facility are issued and any further administrative actions deemed necessary are initiated. The LPA then works with the facility to create a plan of correction (POC), which details the corrective action that a licensee needs to take in order to be in compliance with state law and regulations, and a date by which corrective actions must be made. Current CCLD policies state that complaint investigations should be completed within 90 days.

Distinct roles of CCLD and Child Welfare Services: While CCLD is tasked with investigating allegations of licensing violations, CWS is primarily responsible for investigating allegations of abuse or neglect. On September 27, 2012, CDSS released All-County Letter (ACL) 12-42, which discusses the distinctions in child welfare and licensing roles:

“...the primary goal of CWS agencies for children in out-of-home care is to investigate suspected child abuse and/or neglect as required, and to protect and ensure the safety of children in placement. When necessary, the CWS agencies has [sic] the authority and responsibility to remove a child, assess and recommend a placement, and coordinate an assessment or investigation with law enforcement and the licensing agency pursuant to CCR Title 11, section 930.52.

“The primary role of state or county licensing agencies is to investigate allegations of licensing violations in facilities licensed to provide out-of-home care to children. Such allegations include suspected child abuse, violations of children's personal rights set forth in WIC section 16001.9 and Title 22 regulations that may or may not rise to the level of child abuse, and violations in other health and safety standards such as criminal record clearances, care and supervision requirements, and physical plant or food standards.”

The provisions of this bill would require that CWS and state or county licensing agency investigations contain similar components as it relates to interview protocols, a review of all past complaints concerning the home or facility and the findings and resolution of those complaints, and a requirement that investigations be completed with 45 days, with a potential 45 day upon supervisory approval.

Office of Inspector General (OIG) report: In September 2017, the U.S. Department of Health and Human Services OIG released a report in which it was found that California did not always ensure that allegations and referrals of abuse and neglect for foster youth were properly recorded, investigated, and resolved. The OIG also found that CCLD did not: accurately record or investigate one complaint, refer priority I and II complaints to the Investigations Branch, complete investigations in a timely manner, conduct onsite inspections within 10 days, associate

an employee of a community care facility with the facility, and adequately clear POC deficiencies. Recommendations made by the OIG included:

- a) Develop an action plan to ensure that complaint investigations are completed in a timely manner;
- b) Develop additional policies and procedures as necessary and follow existing policies and procedures;
- c) Ensure that the new complaint system currently under development includes certain functionalities; and,
- d) Provide analysts and their supervisors with periodic mandatory complaint investigation training to reinforce their knowledge of the laws, regulations, policies, and procedures, and best practices related to complaint investigations.

CDSS response to the OIG report: In response to the OIG report, CCLD implemented an action plan that included the development of dashboards for managers to track the status of complaints; developed policies and procedures by issuing a Regional Office Memo on April 21, 2017, to improve data entry and investigative timeframes for complaint investigations; and, conducted mandatory complaint investigation in January 2018 to all Children’s Residential Regional Office licensing staff. CDSS reports that it anticipates completion of its Certification and Licensing System (CALs) to occur in 2019, and will ensure that CALs has the functionality to create alerts to track 10-day inspections of both foster family agencies and certified family homes/resource family homes and to clear POCs. CALs will also include the recording of complaints received and allow analysts or supervisors to enter or revise complaint receipt dates.

Need for this bill: According to the author, “Allowing children to remain in potentially unsafe conditions in foster care for up to 180 days while investigators complete their findings is egregious, and as we have seen recently – sometimes fatal. We have an obligation to these children who have already experienced hardships and are vulnerable to further emotional harm. [This bill] will protect the health and safety of children in out-of-home care by requiring CCLD to complete investigations of abuse or neglect within a timely manner of the receipt of the allegation. This bill establishes a 45-day window to close investigations, allowing for supervisor-approved extensions of 45 days, and critical standards and protocols by which CCLD must abide when conducting investigations of abuse or neglect in out-of-home care.”

Staff comments: The provisions of this bill seek to further provide for the health and safety of children placed in certain community care facilities by requiring allegations of abuse or neglect in these facilities to be investigated by CWS and licensing agencies in a comprehensive and timely manner. Specifically, this bill requires CWS investigations and the licensing investigations to contain similar components related to interview protocols and techniques, reviews of all past complaints and the findings and resolutions of those complaints, and the frequency with which a caseworker visited the alleged victim during the time in which the child was in the placement where the alleged abuse or neglect occurred. While these components, among others included in the bill, may provide valuable information to investigators, it is unclear whether each of the components is relevant to both CWS and licensing investigations. For example, requiring a CWS investigation to include a review of all past complaints concerning the home or facility and the resolution of those complaints, including the nature and status of any corrective actions begs the question of relevance. A CWS investigation is primarily concerned

with the health and safety of the child in placement, and not necessarily focused on whether or not a facility has a history of licensure violations; oversight of compliance with health and safety standards and facility violations is typically the role of the licensing agency. Additionally, it is unclear why a licensing agency would need to review the number of times a caseworker visited the alleged victim, as ensuring social worker compliance with visitation requirements falls within the jurisdiction of CWS, rather than a licensing agency.

It should also be noted that some of these components raise issues related to the privacy of an alleged victim and other foster youth who are interviewed as witnesses. Specifically, the bill requires an investigator to maintain the privacy of all minors and nonminor dependents to the best of their ability, but does not outrightly set a standard of confidentiality and privacy or require an investigator to comply with state and federal laws or regulations related to privacy and confidentiality. The bill also allows an investigator to interview, as necessary, an alleged victim's teachers and doctors; however, the bill is silent on the circumstances under which it is appropriate to discuss alleged abuse or neglect with individuals not directly involved with the investigation. It is also unclear whether doctors, who are mandated reporters, are able to disclose certain information to investigators due to state and federal privacy and confidentiality laws.

The provisions of this bill also seek to ensure that investigations are completed in a timely manner by requiring investigations to be completed within 45 days, while also allowing for a 45 day extension upon approval of a supervisor. This timeline is reflective of CDSS guidance outlined in the department's Evaluator Manual (EM), which serves as a reference manual for LPAs investigating complaints in licensed facilities, and which states that investigations of complaints in certain community care facilities should not exceed 90 days. However, the EM allows for flexibility in instances where further investigation is needed and states, "When there is reasonable doubt and a need for further investigation, the analyst should explain that further evaluation and possible follow-up visits are necessary before making a decision regarding a resolution of the complaint allegation(s)...it is always better to take the time to gather all the required evidence/facts necessary to make a determination as opposed to reaching a resolution prematurely." It is unclear whether the imposition of a strict 45 day timeline (with a possible 45 day extension) may hinder the ability of an investigator to take additional time in order to gather any and all information that may result in the most appropriate outcome. *Should this bill move forward, the author may wish to consider whether the duplicative nature of the investigation components will allow for timely investigations, whether those components take into account a youth's right to privacy, and whether a strict timeline may prevent investigators from conducting the most thorough and appropriate investigation possible.*

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

PRIOR LEGISLATION:

AB 2323 (Rubio) of 2018 was substantially similar to this bill and would have created timelines and listed certain requirements which an investigation of a report of child abuse or neglect that involved a foster child in a community care facility must comply, and would have included the Office of the State Foster Care Ombudsperson among the entities to whom reports of suspected child abuse or neglect and information may be disclosed. AB 2323 was held on the Assembly Appropriations Committee suspense file.

AB 2149 (Longville), Chapter 833, Statutes of 2004, required CDSS to create procedures for responding to incidents and complaints against group home facilities, and imposed requirements on DSS relating to the provision of inspection reports.

REGISTERED SUPPORT / OPPOSITION:

Support

Children's Law Center of California (Sponsor)

National Center for Youth Law (Sponsor)

Advokids

California Lawyers Association - Family Law Section

California State PTA

Center for Public Interest Law/Children's Advocacy Institute/University of San Diego

Children Now

Children's Advocacy Centers of California

Children's Legal Services of San Diego

John Burton Advocates for Youth

Opposition

None on file

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