

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Lisa Calderon, Chair

AB 549 (Gipson) – As Introduced February 10, 2021

SUBJECT: Nonminor dependents

SUMMARY: Declares, as a result of the COVID-19 pandemic, that the juvenile court is not precluded from finding certain minors as within the jurisdiction of the juvenile court on the sole basis that the minor will turn 18 years of age prior to the disposition of a dependency petition, permits the juvenile court to find that is in the best interest of the youth to be declared a nonminor dependent (NMD), requires the court to report certain information and data to the Legislature, and repeals the provisions of this bill as of January 1, 2023. Specifically, **this bill:**

- 1) States Legislative intent to ensure that a youth who was subject to a foster care order, and who had not yet been adjudged a dependent or ward of the juvenile court on their 18th birthday is able to access extended foster care during the COVID-19 pandemic, considering the impacts the pandemic has placed on the dependency court and child welfare system. Further, states Legislative intent to ensure that data is collected regarding the impact of COVID-19 on youth in trying to access the child welfare system.
- 2) Declares, as a result of the impacts of the COVID-19 pandemic, that the juvenile court is not precluded from finding that a minor is within the jurisdiction of the juvenile court on the sole basis that the minor will attain 18 years of age prior to the disposition of a petition to declare them as a dependent.
- 3) Permits, in cases where the juvenile court finds that a minor is within the jurisdiction of the juvenile court, the court to find that it is in the youth's best interest to be declared an NMD, as specified.
- 4) Requires the court to report to the chairs of the relevant Senate and Assembly policy committees the total number of cases to which the provisions of this bill related to the court's ability to find that a minor is within the jurisdiction of the juvenile court are applied, as well as, if known, the minimum, maximum, and average number of days from the detention hearing to the jurisdictional hearing.
- 5) Repeals the provisions of this bill as of January 1, 2023.

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) Provides for extended foster care funding for youth until age 21, as well as adopts other changes to conform to the federal Fostering Connections to Success Act. (WIC 241.1, 303, 366.3, 388, 391, 450, 11400, 11402, 11403)
- 4) Defines “nonminor dependent” as a current or former foster youth who is between 18 and 21 years old, in foster care under the responsibility of the county welfare department, county probation department, or Indian Tribe, and participating in a transitional independent living plan, as specified. (WIC 11400(v))
- 5) Defines “nonminor former dependent or ward” as either: a) A nonminor who turned 18 while subject to an order for foster care placement, and for whom dependency, delinquency, or transition jurisdiction has been terminated, and who is still under the general jurisdiction of the court; or, b) A nonminor who is at least 18 years old and, while a minor, was a dependent child or ward of the juvenile court when the guardianship was established, as specified, and the juvenile court dependency or wardship was dismissed following the establishment of the guardianship. (WIC 11400(aa))
- 6) Requires a county to file a petition to the court requesting a detention hearing within 48 hours of placing a child under temporary custody to determine whether a child should remain in custody and whether any specific court permissions are necessary to provide for the health and safety of the child. (WIC 313 and 319)
- 7) Requires a "detention hearing" to be held within 24 hours of the next court day whenever a detention petition is filed with the court. (WIC 315)
- 8) Requires a juvenile court to hold a “jurisdictional hearing” within 15 judicial days of the petition filed to take the child into temporary custody to determine whether the court has jurisdiction to adjudicate the child. (WIC 334)
- 9) Requires a juvenile court to hold a “dispositional hearing” within 60 days of the detention hearing to determine the appropriate placement for the youth if they are adjudicated to be a dependent of the court. (WIC 352(b))
- 10) Requires the court, at the jurisdictional hearing, to first consider only the question whether the minor is a person within the jurisdiction of the juvenile court, as specified by current law. Further, deems as admissible any legally admissible evidence that is relevant to the circumstances or acts that are alleged to bring the minor within the jurisdiction of the juvenile court, and, further, permits the evidence to be entered into evidence.(WIC 355(a))
- 11) Deems a social study prepared by the petitioning agency, and hearsay evidence contained in it, as admissible and constitutes competent evidence upon which a finding of jurisdiction, as specified by current law, may be based. (WIC 355(b))
- 12) Prohibits, if a party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study, the specific hearsay evidence from being sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based, unless the petitioner establishes an exception, as specified by current law. (WIC 355(c))

- 13) Declares a minor or nonminor as within transition jurisdiction of the juvenile court if they satisfy certain concerns, including, but not limited to: the minor is a ward who is older than 17 years and 5 months of age and younger than 18 years of age and in a foster care placement, or the nonminor is a ward in foster care placement who was a ward subject to an order for foster care placement on the day they attained 18 years of age but has not attained 21 years of age; and, the ward was removed from the physical custody of their parents or legal guardian, adjudged to be a ward of the juvenile court and ordered into foster care placement as a ward, among other requirements, as specified. (WIC 450(a))
- 14) Permits, at a hearing during which termination of jurisdiction over a ward is considered, the court, as an alternative to termination of jurisdiction, modify its court order of jurisdiction and assume transition jurisdiction over a ward, transition dependent, or NMD whose underlying adjudication is vacated, as specified. (WIC 451(a))

FISCAL EFFECT: Unknown

COMMENTS:

Child welfare services system (CWS): The goal of California's CWS system is ultimately to protect children from abuse and neglect, and provide for their health, safety, and overall well-being. When a child is identified as being at risk of abuse or neglect, county juvenile courts hold legal jurisdiction and the CWS system appoints a social worker in order to ensure the needs of the child are met. Through the CWS system, multiple opportunities arise for the judicial system to evaluate, review, and determine the custody of the child, or determine the best out-of-home placement for the youth. Together, the judicial system and the child's social worker work to ensure that the best possible services are provided to the child. The CWS system, when appropriate, also works to reunite children who have been removed from the custody of their parents or guardians with individuals they consider to be family in order to maintain familial bonds wherever possible. As of October 1, 2020, there were 60,045 youth placed in California's child welfare system.

Extended foster care: In 2010, AB 12 (Beall), Chapter 559, Statutes of 2010, extended foster care benefits for certain eligible youth until the age of 21. Prior to the expansion of foster care benefits, youth "aged out" of the CWS system at 18 years old and were required to navigate the challenges of young adulthood, including obtaining education, stable housing, and employment, without the support of the CWS system. In recognition of the difficulties faced by these youth, extended foster care provides eligible youth between the ages of 18 and 21, known as NMDs, with the services and supports they need to experience independent living in supervised living environments. Extended foster care also enables youth to obtain educational and employment training to better prepare them to transition to adulthood and self-sufficiency.

In order to be eligible for extended foster care, youth must meet a number of criteria, including the requirement that a youth be in foster care under the responsibility of the county welfare or probation department on their 18th birthday, as well as meet the goals of a transitional independent living plan (TILCP), which describes the goals and objectives of how the NMD will make progress in the transition to living independently and will ultimately assume responsibility for themselves as an independent adult. The TILCP includes a TILP that ensures the youth is actively and meaningfully participating in one or more of the five criteria that must be met in order to participate in extended foster care, as well as the NMD's supervised placement setting, and the youth's permanent plan for transitioning to independent living.

Some youth choose to participate in extended foster care immediately following their 18th birthday, while others leave the foster care system after attaining 18 years of age, but choose to reenter care at some point before their 21st birthday under what is called a “voluntary reentry agreement.” A voluntary reentry agreement is a written agreement between the youth and the county welfare or probation department, or a tribal placing entity, that documents the youth’s desire and willingness to reenter foster care and be placed in a supervised setting under the placement and care responsibility of the placing agency, among other requirements.

Legislative Analyst’s Office (LAO) report: The 2018-19 Budget Act required the LAO to review data about the reporting of child abuse and neglect (referred to as maltreatment in the report) incidents among children who are ages 14-17. The report, entitled *Older Youth Access to Foster Care*, was released in March 2019, and compares older and younger youth based on a number of factors related to maltreatment, including:

- Rates of reporting, outcomes of reporting, sources of reports, if available, including self-reported maltreatment;
- Living situations, including homelessness or if youth are living with a parent or guardian at the time of a report;
- The number of petitions filed pursuant to WIC 329, which allows a social worker to decide whether to file a dependency petition; and,
- Percentage of reports that involved children with prior reports of maltreatment; and generalized outcomes of prior maltreatment.

The report made a number of findings, including:

Lower rates of maltreatment substantiation correspond to higher rates of evaluated out reports: After a maltreatment report is made, social workers may either initiate an investigation, or, based on an evaluation, determine that an investigation is not warranted. The LAO report found that for younger youth, 19% of maltreatment reports were evaluated out between 2010 and 2017 compared to a rate of 30% for older youth over the same time period. Data tables in the report demonstrate that older youth had higher rates of maltreatment evaluated out across all abuse categories, but particularly for allegations involving sexual and physical abuse.

Rates of maltreatment report and substantiation differ by age: The report also found that there is a consistent relationship between increasing age and incrementally decreasing substantiation rates, e.g. infants have a higher substantiation rate than children in elementary school, who have higher substantiation rates than middle school aged youth, who have higher substantiation rates than high school aged youth. As a result, the report concluded that, not only do differences in substantiation rates differ between younger children and older teenagers, differences in substantiation rates are an observable pattern across the entire age spectrum for youth in California.

Lack of data hindered the ability of the LAO to fully investigate some requested information: When investigating the information requested by the Budget Act, the LAO found that some data was incomplete; however, the LAO acknowledged that the identified data gaps are not intended to be a critique of the administration or counties, as they are not data elements that have previously been requested or required.

The report also included a number of recommendations, including the suggestion that the California Department of Social Services (CDSS) collect additional information to be reported to the Legislature to better inform the reasons for any differences between older and younger youth with reports for maltreatment. The LAO writes that such data would also help determine whether policy interventions would be an appropriate remedy for those differences. Recommendations for additional data collection includes, but is not limited to:

- Systematically track the reason a maltreatment report is evaluated out in order to better understand why older youth and youth in homeless families have higher rates of reports evaluated out;
- More precisely track homeless youth in order to understand whether homelessness impacts access to foster care for both older and younger age groups; and,
- Collect data on dependency self-petitions pursuant to WIC Sections 329 and 331 in order to obtain a better understanding of whether older youth experience relative challenges gaining access to foster care, even if their rate of entry into foster care following a substantiation of maltreatment is equivalent to younger youth, among other recommendations.

COVID-19 Pandemic: On March 4, 2020, in response to the global COVID-19 outbreak, Governor Newsom declared a statewide state of emergency. Across the state, throughout the nation, and around the world, the effects of COVID-19 on public health, as well as the economy, have been drastic. In addition to the over 500,000 lives lost to COVID-19 in the U.S., many individuals have also experienced unemployment, as well as the food and housing insecurity resulting from reduced employment opportunities. COVID-19 has also deeply impacted California's population of older foster youth, who must meet certain age, work, and educational requirements in order to remain eligible for extended foster care.

In response to the unique needs of older foster youth amidst the ongoing COVID-19 pandemic, AB 89 (Ting), Chapter 7, Statutes of 2020, known as the Budget Act of 2020, allocated \$32 million to:

“...fund the assistance costs associated with continuing an extended foster care benefit assistance payment for any NMD who met eligibility requirements for the Extended Foster Care program, has lost their employment or has experienced a disruption in their education program resulting from COVID-19, and cannot otherwise meet any of the participation requirements...and extend foster care eligibility for NMDs who turn 21 years of age while in extended foster care on or after April 17, 2020, through June 30, 2021, beyond the maximum age limits [enumerated in current law] and accompanying rules or regulations.”

Need for this bill: The provisions of this bill seek to ensure that older youth who are victims of abuse or neglect are able to access the critical supportive services, including housing, education, mental health supports, and medical services, that accompany enrollment in extended foster care. The COVID-19 pandemic has had a myriad of impacts on the child welfare system, including delays in dependency hearings and delays in abuse and neglect investigations. The provisions of this bill seek to alleviate the unintended consequences of these delays by permitting the juvenile court to find that a minor is within the jurisdiction of the juvenile court on the sole basis that the youth will attain 18 years of age prior to the disposition of a petition to adjudicate the youth as a dependent.

According to the author, “The quality of life for older foster youth is threatened when unmet needs remain unattended to and extended foster care is not an option due to court closures and hearing delays. The burden this causes fall on our younger generations who are ‘timing out’ of the system and have no other means to care for themselves. During these unprecedented times, the State of California has a responsibility to meet the ongoing needs of older youth before many of them become homeless, miss educational opportunities, and essentially lose their safety net and support system. [This bill] will prevent foster youth from losing access to critical services that will help them transition into early adulthood. Older youth need to remain eligible for extended foster care services, which include access to housing, food, mental health and health care services, and transportation to maintain their foundation to achieve a healthy and successful life.”

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

PRIOR AND RELATED LEGISLATION:

AB 1996 (Gipson) of 2020, would have required CDSS to report to the Legislature and stakeholders certain data related to the entry and reentry of certain youth into foster care, and would have deemed NMDs who are participating in a transitional independent living case plan and who is not in an approved housing placement for more than two consecutive months as eligible for the Aid to Families with Dependent Children-Foster Care Program for a certain amount of time, as specified, after the youth’s 21st birthday. AB 1996 was set for hearing in the Assembly Human Services Committee but the hearing was postponed by the committee.

AB 748 (Gipson), Chapter 682, Statutes of 2019, required the court to hold a dispositional proceeding for a youth who is 18 years of age in order to be eligible for extended foster care (EFC) if certain criteria is met.

AB 2337 (Gipson), Chapter 539, Statutes of 2018, expanded the circumstances under which certain NMDs under the age of 21 may petition the court to assume dependency jurisdiction, as specified.

AB 604 (Gipson), Chapter 707, Statutes of 2017, required the court to assume transition jurisdiction over a youth who was arrested for or convicted of any nonviolent offense committed while he or she was a victim of human trafficking regardless of a court order vacating the underlying adjudication.

AB 403 (Stone), Chapter 773, Statutes of 2015, implemented continuum of care reform recommendations to better serve children and youth in California’s CWS system.

AB 2454 (Quirk Silva), Chapter 769, Statutes of 2014, permitted a nonminor former dependent who previously received extended Kin-GAP or adoption assistance program, but whose former guardians are no longer providing support to the nonminor, to petition the court to resume dependency under the EFC program.

AB 212 (Beall), Chapter 459, Statutes of 2011, made various clarifying and substantive changes to the California Fostering Connections to Success Act in order to ensure proper implementation on January 1, 2012, and other changes to existing state law in order to comply with various provisions of federal law.

AB 12 (Beall), Chapter 559, Statutes of 2010, the California Fostering Connections to Success Act, provides an option for continued jurisdiction of federally-eligible NMDs or former dependents of the juvenile court who are between the ages of 18 and 21, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance for Children's Rights (Co-Sponsor)
California Coalition for Youth (Co-Sponsor)
Children Now

Opposition

Los Angeles Dependency Lawyers, INC.

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