

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Lisa Calderon, Chair

AB 640 (Cooley) – As Amended April 12, 2021

SUBJECT: Extended foster care: eligibility redetermination

SUMMARY: Permits a county to petition the juvenile court on behalf of certain nonminor dependents (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; expands 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; and, requires the California Department of Social Services (CDSS), by July 1, 2022, to develop and disseminate guidance related to transitioning youth into the extended foster care (EFC) program in a way that permits counties to re-determine federal financial participation. Specifically, **this bill:**

- 1) Permits, for any NMD who attained 18 years of age while subject to an order for foster care placement and who has not attained 21 years of age and who was ineligible for federal foster care benefits prior to turning age 18, the county child welfare services agency, probation department, or tribal placing agency to, on behalf of and with the consent of the NMD, petition the court to dismiss its dependency or transition jurisdiction and immediately resume the dependency or transition jurisdiction in order to establish the NMD's eligibility for federal financial participation.
- 2) Requires a petition for dismissal and re-entry to include notice to the NMD and the NMD's attorney.
- 3) Requires, if the court grants a petition to terminate dependency or transition jurisdiction, the court, upon terminating dependency or transition jurisdiction, to maintain general jurisdiction over the NMD and immediately resume dependency or transition jurisdiction. Further, permits the court to grant a petition without a hearing.
- 4) Specifies that certain requirements related to wards of the court, as specified, do not apply to a petition to terminate dependency or transition jurisdiction, as described by the provisions of this bill.
- 5) Prohibits, if the NMD for whom a petition has been filed pursuant to the provisions of this bill, established a transitional independent living plan (TILP) prior to filing the petition, the agency responsible for the NMD's placement care from being required to prepare a new TILP, as specified.
- 6) Prohibits, if a NMD for whom a petition has been filed pursuant to the provisions of this bill, has signed a voluntary re-entry agreement after attaining 18 years of age, but prior to the filing of the petition, the NMD from being required to sign a new voluntary re-entry agreement. Further, requires, if the NMD has not previously signed a voluntary re-entry agreement after attaining 18 years of age, the county child welfare, probation, or tribal agency to ensure that the NMD signs a voluntary re-entry agreement prior to filing a petition.

- 7) Requires the county child welfare, probation, or tribal placing agency to ensure that the NMD does not experience a break in services or supports before, during, or after the filing or granting of a petition pursuant to the provisions of this bill.
- 8) Prohibits a county child welfare, probation, or tribal placing agency from filing a petition pursuant to the provision of this bill for an undocumented NMD.
- 9) Requires, no later than June 1, 2022, the Judicial Council to develop and implement standards, and develop and adopt appropriate forms, as necessary to implement the provisions of this bill.
- 10) Expands the definition of “voluntary re-entry agreement” to include a written agreement between a NMD who has not signed a voluntary re-entry agreement after attaining 18 years of age and for whom a petition will be filed, and, if applicable, the NMD’s agreement to participate in the filing of a petition pursuant to the provisions of this bill.
- 11) Requires, if a TILP was not previously completed for a NMD, a TILP be developed within 60 days of a nonminor’s re-entry to foster care.
- 12) Defines “eligibility for federal financial participation” to mean that the payment is consistent with a federally approved state plan authorizing federal financial participation in an Aid to Families with Dependent Children-Foster Care (AFDC-FC) payment, as defined in current state law. Further, prohibits, until and unless federal financial participation is obtained, no AFDC-FC payment may be made from either state or county funds on behalf of a child determined to be eligible for AFDC-FC solely as a result of certain litigation, as specified.
- 13) Permits a county child welfare, probation, or tribal placing agency to re-determine a NMD’s eligibility for federal financial participation after the court has resumed dependency or transition jurisdiction over the youth, pursuant to the provisions of of this bill
- 14) Requires CDSS, no later than July 1, 2022, or upon the receipt of any necessary federal approvals, to develop and disseminate guidance to county child welfare, probation, and tribal agencies on recommended procedures to follow in order to transition a youth to the EFC program in a manner than enables the county to re-determine the youth’s eligibility for federal financial participation, pursuant to current law.
- 15) Requires the procedures developed pursuant to the provisions of this bill to take into consideration input from stakeholders, including but not limited to, the exclusive representative of county child welfare and probation agencies, the Judicial Council, child welfare workers, dependency counsel for children, and current and former foster youth.
- 16) Instructs the director CDSS, no later than July 1, 2022, to seek any federal approval necessary to implement certain provisions of this bill.
- 17) Makes technical and conforming changes.

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, 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) 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 AFDC-FC to be provided to any child under 18 years of age, and to any NMD who meets one of the following criteria, including, but not limited to: the child has been relinquished for purposes of adoption; the child has been removed from the physical custody of their parent as a result of a voluntary placement agreement, or the child has been placed in foster care under the federal Indian Child Welfare Act, among others, as specified. (WIC 11401)
- 7) Deems a child as eligible for federal AFDC-FC if the child has been removed from the custody of their parent, relative, or guardian as a result of a voluntary placement agreement or a judicial determination that continuance in the home would be contrary to the child’s welfare and that, if the child was placed in foster care, reasonable efforts were made to prevent or eliminate the need for removal of the child from their home and to make it possible for the child to return to their home, or the child is an NMD who satisfies certain criteria and agrees to the placement and care responsibility of the placing agency by signing a voluntary re-entry agreement, and certain conditions apply, as specified. (WIC 11401(g))
- 8) Defines “Transitional independent living case plan” (TILCP) as a child’s case plan submitted for the last review hearing held before the child reaches 18 years of age or the NMD’s case plan, updated every six months, that describes the goals and objectives of how the NMD will make progress in transition to living independently and assume incremental responsibility for adult decisionmaking, the collaborative efforts between the NMD and the social worker, probation officer, or Indian tribal placing entity and the supportive services as described in

the TILP to ensure active and meaningful participation in one or more of the certain eligibility criteria, the NMD's appropriate supervised placement setting, and the NMD's permanent plan for transition to living independently, as specified. (WIC 11400(y))

- 9) Defines "voluntary re-entry agreement" as a written voluntary agreement between a former dependent child or ward or a former NMD who has had juvenile court jurisdiction terminated, and the county welfare or probation department or tribal placing entity that documents the NMD's desire and willingness to comply with certain requirements, as specified. (WIC 11400(z))
- 10) Defines "eligible for financial participation" as meaning that the payment is consistent with a federally approved state plan authorizing federal financial participation an AFDC-FC payment. Further, prohibits, until and unless federal financial participation is obtained, no payment of AFDC-FC may be made from either state or county funds on behalf of a child determined to be eligible for AFDC-FC solely as a result of certain litigation, as specified. (WIC 11402.1)
- 11) Defines "transitional independent living plan" as a written description of the programs and services that will help the child, consistent with the child's best interests, to prepare for the transition from foster care to successful adulthood, and, in addition, whether the youth has an in-progress application pending for Supplemental Security Income benefits or for special immigrant juvenile status or other applicable application for legal residence and an active dependency case is required for that application. Further, enumerates the requirements of a TILP. (WIC 16501.1(g)(16))

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 wellbeing. 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 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 January 1, 2021, there were 59,716 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 EFC, 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 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 EFC immediately following their 18th birthday, while others leave the foster care system after attaining 18 years of age, but choose to re-enter care at some point before their 21st birthday under what is called a "voluntary re-entry agreement." A voluntary re-entry 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 re-enter foster care and be placed in a supervised setting under the placement and care responsibility of the placing agency, among other requirements.

When EFC was initially implemented, it was anticipated that only 61% of eligible youth would participate in the program and by the third year, only 31% of eligible youth were expected to continue to participate. Actual participation rates of eligible youth are between 90-95%.

Aid to Families with Dependent Children-Foster Care: Foster care payments for eligible youth are provided through either state or federal AFDC-FC. In order to be eligible for federal AFDC-FC, the home from which the child was removed must meet Aid for Dependent Children (AFDC) eligibility criteria from 1996 for the month in which a dependency petition is filed with the juvenile court, or in any of the six months prior to the month in which the petition is filed. In 1996, the income limit for a family of three to qualify for AFDC was \$723. Eligibility for federal AFDC-FC is determined at the time a child is removed from their parent's custody and eligibility is not re-determined once the youth is in foster care. Because many youth are ineligible for federal AFDC-FC, California created state AFDC-FC, which provides funding to foster children who are placed with non-relative foster parents.

Because eligibility for federal AFDC-FC is determined at the time a child is removed from their parents' custody, youth who immediately transition from foster care to EFC do not undergo federal AFDC-FC eligibility re-determination, as there is no disruption in their foster care status that would warrant re-determination. However, current law permits nonminors who are eligible for EFC to undergo re-determination for federal AFDC-FC if they re-enter the dependency system through a voluntary re-entry agreement. It is worth noting that the services and supports provided to youth in EFC do not differ regardless of whether a youth's foster care payments are state- or federally-funded.

2011 Realignment: In 2011, AB 118 (Committee on Budget), Chapter 40, Statutes of 2011, realigned the responsibility to fund various criminal justice, mental health, and social services programs to local governments (often referred to as Realignment, or 2011 Realignment). AB 118 established the "Local Revenue Fund 2011" to receive revenues generated from various sources, including dedicated sales and use tax and Vehicle License Fee revenues. As a result of 2011

realignment, counties are responsible for providing 100% of the nonfederal costs for a significant portion of the child welfare system.

Need for this bill: The provisions of this bill seek to permit counties to leverage federal financial participation to help administer the EFC program. Because NMDs and nonminors eligible for EFC are living more independently than youth under 18 in the CWS system, their income as a household of one is more likely to meet the 1996 AFDC income thresholds that are required for federal AFDC-FC eligibility. Additionally, because current law permits youth participating in EFC through a voluntary re-entry agreement to be potentially eligible for federal AFDC-FC, this bill could result in an increased number of youth receiving federally-funded AFDC-FC, which would assist counties in administering a vital program intended to help older foster youth achieve self-sufficiency.

According to the author, “As of October 2020, there were 60,045 children in our child welfare system. Of those children, 8,256 were aged 18-21 in extended foster care, and 6,079 were aged 16-17 and soon to be ‘aging out’ of traditional foster care to potentially enter extended foster care in the next one to two years. Although the majority of children in foster care are under 15 years of age, our older foster youth require more resources and supports as they transition to adulthood, including housing, mental health, substance abuse, and job training.

“When extended foster care was established as an option through the federal Fostering Connections to Success Act, it provided a 50% match from the federal government for Kin-GAP with the intent to move the money freed up by the federal match to support the extended foster care program. But the savings anticipated from the program ended up being smaller than estimated due to a much higher opt-in rate of foster youth moving into extended foster care. To complicate matters further, there has been disagreement between the state and counties post-2011 Realignment over what costs should be borne in extended foster care by the state.

“[This bill] allows counties to re-establish a foster youth’s federal eligibility when they enter extended foster care. Since foster youth at this transition age have little to no resources under their own names, most will meet the federal criteria for full extended foster care funding. This will free up county extended foster care to use for additional services for these transition age youth.”

PRIOR AND RELATED LEGISLATION:

AB 403 (Stone), Chapter 773, Statutes of 2015, implemented Continuum of Care Reform recommendations to better serve children and youth in California’s child welfare services system.

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 118 (Committee on Budget), Chapter 40, Statutes of 2011, established the “Local Revenue Fund 2011” and established the fund account structure for public safety realignment, which includes foster care, child welfare services, and adoptions.

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

County Welfare Directors Association of California (CWDA) (Sponsor)
California State Association of Counties

Opposition

None on file

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