

Date of Hearing: March 26, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

AB 748 (Gipson) – As Introduced February 19, 2019

**SUBJECT:** Nonminor dependents

**SUMMARY:** Includes a youth who was subject to an order for foster care before they reached 18 years of age but was not yet adjudged a ward of the juvenile court before reaching their 18th birthday, a youth who appealed an order to dismiss a petition for juvenile court jurisdiction but whose case was not resolved before they reached 18 years of age, and a youth whose parent or guardian do not provide support to the youth but still receive Adoption Assistance Program (AAP) payments or Kinship Guardianship Assistance Payment Program (Kin-GAP) on their behalf, as eligible for extended foster care benefits. Specifically, **this bill:**

- 1) States Legislative intent related to ensuring under certain circumstances the entry and re-entry of nonminors into extended foster care.
- 2) States that the court shall not be precluded from finding that a minor is within the jurisdiction of the juvenile court, as specified, on the sole basis that the youth will turn 18 years old before the disposition of the petition.
- 3) Allows the appellate or juvenile court, in instances where a timely appeal is taken, or other appellate relief sought, from an order dismissing a petition for juvenile court jurisdiction, to enter an order sustaining the petition, as specified, regardless of whether the youth has turned 18 years of age. Further, specifies that if the court enters into an order to sustain a petition for juvenile court jurisdiction, the order is deemed effective as of the date of the order of the dismissal from which the relief was granted.
- 4) Requires the court to conduct a dispositional hearing, if the court finds that a child is within the jurisdiction of the juvenile court and turns 18 years of age prior to the dispositional hearing, as specified.
- 5) Requires the court to conduct a hearing for a nonminor dependent who is found to be within the jurisdiction of the juvenile court, as specified, and further requires the court to advise certain parties of their right to be present at the hearing.
- 6) Requires the social worker to file a report with the court, at least two calendar days prior to the hearing required by the provisions of this bill, describing the current need for court supervision and intervention, and further requires the report to address all of the following:
  - a) Whether the nonminor is able to safely reside in the home of the parent or guardian;
  - b) Whether it is in the nonminor's best interest to remain in foster care; and,
  - c) Whether the nonminor intends to satisfy at least one of the extended foster care eligibility criteria specified in current law.
- 7) Requires the court to determine, at the hearing required by the provisions of this bill, all of the following:

- a) Whether it is in the nonminor's best interest to remain in foster care;
  - b) Whether reasonable efforts were made to meet the youth's needs prior to placement into foster care;
  - c) Whether the nonminor dependent is able to safely reside in the home of the parent or guardian; and,
  - d) Whether the nonminor intends to satisfy at least one of the extended foster care eligibility criteria specified in current law.
- 8) Requires the court to declare the youth a nonminor dependent and order all of the following if the court finds that it is in the best interest of the nonminor to remain in foster care, that the nonminor is not able to safely reside in the home of the parent or guardian, and that the nonminor intends to satisfy at least one of the extended foster care eligibility criteria specified in current law:
- a) That placement and care be the responsibility of the county child welfare agency;
  - b) That a permanent plan for the nonminor dependent be created; and,
  - c) That a transitional independent living case plan be developed within 60 days.
- 9) Requires the court to set a review hearing for the nonminor dependent pursuant to current law, as specified, within six months.
- 10) Requires the court to set a hearing to terminate jurisdiction, as specified in current law, if the court finds that it is not in the best interest of the nonminor to remain in foster care, that the nonminor is able to safely reside in the home of the parent or guardian, or that the nonminor does not intend to satisfy at least one of the extended foster care eligibility criteria specified in current law.
- 11) Specifies that, for a nonminor who attained 18 years of age while subject to an order for foster care placement and who has not attained 21 years of age, a foster care placement includes a temporary order for foster care pursuant to current law if the person was declared a nonminor dependent, as specified.
- 12) Deletes the requirement that a nonminor former dependent's guardian or guardians or adoptive parent or parents no longer receive KIN-GAP or AAP payments on their behalf in order to allow the youth to petition the court for a hearing to determine whether to assume jurisdiction.
- 13) Includes a nonminor's adoptive parent or parents, or guardian or guardians, among the individuals to whom the court must give at least notice before a hearing to consider a petition to assume dependency jurisdiction over a nonminor, and stipulates that such notice shall be given at least three days in advance of the hearing, as specified.
- 14) Stipulates that a nonminor may file a petition to assume dependency even if the nonminor's guardian or guardians or adoptive parent or parents are receiving aid on behalf of the minor.

- 15) Includes a nonminor's adoptive parent or parents, or guardian or guardians, among the individuals to whom the court must give notice before a hearing to consider a petition to assume dependency jurisdiction over a nonminor, and stipulates that such notice shall be given at least three days in advance of the hearing, as specified.
- 16) Allows a minor to enter into a voluntary reentry agreement prior to filing the petition if the nonminor's guardian or guardians, or adoptive parent or parents, as applicable, have died; or the nonminor's guardian or guardians, or adoptive parent or parents, are no longer providing ongoing support and are no longer receiving payment on behalf of the minor.
- 17) Includes in the definition of "nonminor dependent": an individual who has attained 18 years of age while under a temporary order for foster care placement, as specified, and was declared a nonminor dependent pursuant to certain provisions of this bill; and an individual for whom the court has ordered the development of a transitional independent living case plan pursuant to certain provisions of this bill.
- 18) Includes in the definition of "nonminor former dependent or ward" an individual who reached 18 years of age while under a temporary order for foster care placement, as specified, and was declared a nonminor dependent pursuant to certain provisions of this bill.
- 19) Extends eligibility for Aid to Families with Dependent Children- Foster Care (AFDC-FC) payments to nonminor dependents by deleting the requirement that a nonminor's former guardian or adoptive parent no longer receives benefits on behalf of the youth, as specified.
- 20) 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 [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) States the intent of the Legislature to preserve and strengthen a child's family ties whenever possible and to reunify a foster youth with his or her biological family whenever possible, or to provide a permanent placement alternative, such as adoption or guardianship. (WIC 16000)
- 4) 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)
- 5) 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)

- 6) 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)
- 7) 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 he or she is adjudicated to be a dependent of the court. (WIC 352(b))
- 8) 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)
- 9) 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))
- 10) 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))
- 11) Requires, pursuant to federal law as specified, an individual who was in foster care on his or her 18th birthday to receive Medi-Cal benefits until his or her 26th birthday, and to be continuously enrolled during this period without any interruption in coverage or new application required. (WIC 14005.28)
- 12) Allows a nonminor former foster youth under the age of 21 to petition the court for re-entry into foster care if his or her guardian or adoptive parent is no longer providing him or her with support, as specified. (WIC 388.1)
- 13) Establishes that termination of kinship guardianship also terminates eligibility for Kin-GAP unless specified conditions apply and an alternate guardian or co-guardian is appointed. (WIC 388.1 (e))
- 14) Permits a nonminor former dependent who previously received Kin-GAP or AAP, and whose guardian or adoptive parent dies or no longer provides ongoing support or receives benefits on behalf of the nonminor, to petition the court to re-enter extended foster care if the nonminor meets other criteria for eligibility for extended foster care. (WIC 388.1 and WIC 11403 (c))
- 15) Establishes Kin-GAP in order to enhance family preservation by ensuring that youth are in long-term, stable placements with relatives, as specified. (WIC 11360, *et seq.*)
- 16) Establishes AAP in order to benefit eligible children residing in foster care by providing the stability and security of permanent homes, as specified. (WIC 16115, *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.

***Continuum of Care Reform:*** Over the past four years, California has enacted legislation, known as the Continuum of Care Reform (CCR), to improve placement and treatment options for youth in foster care. AB 403 (Stone), Chapter 773, Statutes of 2015, sponsored by the California Department of Social Services (CDSS), sought to improve outcomes for children and youth served by the CWS system by working to ensure that foster youth have their day-to-day physical, mental, and emotional needs met, that they have the opportunity to grow up in permanent and supportive homes, and have the opportunities necessary to become self-sufficient and successful adults. CCR also sought to reduce the use of congregate care as a frequently used placement option for youth, as data have demonstrated that youth placed in congregate care settings experience poorer outcomes than youth placed in family settings. Subsequent legislation to further facilitate implementation of CCR efforts include AB 1997 (Stone), Chapter 612, Statutes of 2016, AB 404 (Stone), Chapter 732, Statutes of 2017, and AB 1930 (Stone), Chapter 910, Statutes of 2018.

***Dependency court procedures:*** Children removed from their parents' custody are temporarily placed within the jurisdiction of the child welfare system pending a decision regarding their health and safety. A social worker is required, within 48 hours of taking the child into temporary custody, to file petition with the court requesting that a detention hearing be conducted in order to decide whether further detention of the child is warranted. If the social worker petitions for the child to be declared a dependent of the court, current law requires the detention hearing be held within 48 hours of the petition being filed. Social workers are required to outline at the detention hearing the allegations of abuse or neglect made against the child's parents, as well as the rationale for removing the child from their parents' custody. If the court determines that the child's best interests are served by removing them from their parents' custody, the child is removed and permanent placement of the child is determined at a later date.

Within 15 days of a child's removal from their parents' custody, a jurisdictional hearing must occur in order to determine whether the allegations outlined in the social worker's petitions are true. If the allegations are deemed to be true, then the child is determined to be within the jurisdiction of the juvenile court, thereby prompting a dispositional hearing within 60 days of the initial detention hearing. At the dispositional hearing, the court determines the parameters of the family reunification plan and makes a determination as to where and with whom the child will reside. Whenever possible, and pursuant to current law, youth are placed with relatives or non-

relative extended family members in order to preserve familial ties, though foster family homes and group care settings are also utilized when necessary.

***Extended foster care:*** AB 12 (Beall), Chapter 559, Statutes of 2010, known as the California Fostering Connections to Success Act, was signed by Governor Schwarzenegger in September 2010 and extended foster care benefits for eligible youth (referred to as nonminor dependents, or NMDs) aging out of the CWS system. Prior to the passage of AB 12, youth aged out of the foster care system at 18 years old and were instead 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, AB 12 provided services and supports to transition-age youth until they reach 21 years of age and afforded these youth the opportunity to experience independent living in supervised living environments and the ability to obtain educational and employment training to better prepare them to transition into adulthood and self-sufficiency.

***Additional programs:*** Additional state programs and federal funding sources discussed in the provisions of this bill are as follows:

**Kinship Guardian Assistance Payments (Kin-GAP):** Kin-GAP is a cash aid program aimed at supporting foster children who have been placed in long-term foster care with a relative caregiver. SB 1902 (McPherson), Chapter 1055, Statutes of 1998, offered a compromise between monthly foster care payments and the wishes of some caregivers for a greater sense of permanency and autonomy over living arrangements by allowing youth to remain eligible for monthly payments equal to the county foster care family home rate, while also providing the freedom of a permanent placement. Later, AB 1808 (Assembly Committee on Budget), Chapter 75, Statutes of 2006, extended the Kin-GAP program to children whose juvenile court wardship is terminated in favor guardianship with a relative caregiver.

**Adoption Assistance Program (AAP):** AAP was created in recognition of the financial hardships often experienced by adoptive parents who attempt to meet the special needs of children previously placed in foster care. In order to receive AAP payments, adoptive families must first apply for benefits by completing a Request for Adoption Assistance form. The special needs of the child are then assessed and, if deemed eligible, a signed adoption assistance agreement is negotiated. Reassessment is conducted every two years in order to determine the amount of subsequent payments the youth may be eligible for. Youth between the ages of 18 and 21 are eligible for continuing AAP if it is determined that they have a documented mental or physical condition, or are participants in the extended adoptions program.

**Aid to Families with Dependent Children- Foster Care (AFDC-FC):** Funding to provide for the needs of the nearly 60,000 youth in California's foster care system is provided by either the state or federal government. In order to be federally eligible for foster care (AFDC), the home from which a foster youth was removed must meet AFDC eligibility criteria from 1996 AFDC in the month the petition is filed or in any of the 6 months prior to the month in which the petition is filed. Because the criteria to receive federal AFDC funding is so strict, California created AFDC-FC, which blends state and county funds to provide for youth who are otherwise ineligible for AFDC.

***Population affected by this bill:*** A memorandum prepared by the Legislative Analyst's Office on March 7, 2018, outlined four specific populations who, at the time the publication was released, were precluded from reentering foster care:

- 1) Youth who turn age 18 before resolution of their disposition hearing;
- 2) Youth who turn age 18 before the resolution of their dependency appeal;
- 3) Youth who are eligible for Kin-GAP or AFDC-FC but are receiving an alternative benefit; and,
- 4) Youth whose parent or guardian do not provide support to the youth but still receive AAP payments or Kin-GAP on their behalf.

AB 2337 (Gipson), Chapter 539, Statutes of 2018, while initially written to address the needs of all four populations, was amended to pertain to youth who have not yet attained 21 years of age and would have received Kin-GAP or AFDC-FC payments were it not for the fact that the youth is receiving Supplemental Security Income benefits or other aid from the federal Social Security Administration. The provisions of this bill would seek to make eligible for extended foster care the remaining three populations.

The memorandum also stated that, due to the unique nature of these populations, the youth affected by the provisions of AB 2337 (and this bill as a result) are not captured in current state administrative datasets. As such, the total estimated number of youth (anywhere from 50-120 foster youth throughout the state) was presented by the LAO as ranges due to the significant uncertainties and a number of assumptions used to arrive at the final caseload projections.

***Need for this bill:*** The provisions of this bill seek to target a very small group of youth who, through no fault of their own, do not currently fall within the jurisdiction of the juvenile court and therefore do not qualify for the services and supports provided by the extended foster care program. Research demonstrates that many youth who exit foster care at age 18 do not have the skills necessary to be self-sufficient; the provisions of this bill seek to provide a small, but not insignificant, number of youth with the skills necessary to transition successfully into adulthood by deeming them eligible for reentry into the foster care system.

According to the author, “Following a childhood of overcoming barriers, foster youth deserve the support that they need to thrive. [This bill] will eliminate administrative barriers to ensure that the limited number of youth in certain narrow situations in need of transitional services are able to enter or re-enter extended foster care. Administrative barriers and loopholes should not prevent foster youth from accessing the services that they critically need.”

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

#### **PRIOR LEGISLATION:**

***AB 2337 (Gipson), Chapter 539, Statutes of 2018,*** was substantially similar to this bill upon introduction, but was later amended to expand the circumstances under which certain nonminor dependents under the age of 21 may petition the court to assume dependency jurisdiction, as specified.

***AB 604 (Gipson), Chapter 707, Statutes of 2017,*** was substantially similar to this bill upon introduction, but was later amended to require 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 CCR recommendations to better serve children and youth in California's child welfare services system.

***AB 2454 (Quirk Silva), Chapter 769, Statutes of 2014***, permitted a nonminor former dependent who previously received extended Kin-GAP or AAP, but whose former guardians are no longer providing support to the nonminor, to petition the court to resume dependency under the extended foster care 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 nonminor dependents or former dependents of the juvenile court who are between the ages of 18 and 21, as specified.

***AB 1808 (Assembly Committee on Budget) Chapter, 269, Statutes of 2006***, extended the provisions of the Kin-GAP program to probation youth exiting the delinquency system to live with a related guardian.

***SB 1901 (McPherson), Chapter 1055, Statutes of 1998***, established Kin-GAP.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Coalition for Youth (Sponsor)  
Children's Law Center of California (Sponsor)  
Alliance for Children's Rights  
Aspiranet  
California Lawyers Association – Family Law Section  
Children Now  
Tipping Point Community

### **Opposition**

None on file

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