

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Corey A. Jackson, Chair

SB 9 (Cortese) – As Amended May 18, 2023

**SENATE VOTE:** 40-0

**SUBJECT:** Raising the Age for Extended Foster Care Pilot Program Act of 2023

**SUMMARY:** Requires the California Department of Social Services (CDSS) to administer and select at least three counties to participate in a three-year pilot program to extended foster care services to nonminor dependents (NMDs) up to 22 years of age, if the NMD is experiencing homelessness or is at a reasonable risk of homelessness if they are not under the jurisdiction of the juvenile court. Specifically, **this bill**:

- 1) Creates the “Raising the Age for Extended Foster Care Act of 2023”.
- 2) Requires CDSS, subject to an appropriation, to administer a three-year pilot program to extended foster care services to NMDs up to 22 years of age if the NMD is experiencing homelessness or is at a reasonable risk of homelessness if they are not under the jurisdiction of the juvenile court.
- 3) Requires CDSS to select at least three counties to participate in the pilot program who apply to the pilot program.
- 4) Requires the following to apply for each participating county:
  - a) The juvenile court may have within its jurisdiction as a NMD, as defined in existing law, any nonminor who is 21 years of age and was previously under the jurisdiction of the juvenile court if the juvenile court finds by a preponderance of the evidence and on the record that the nonminor is experiencing homelessness or is at reasonable risk of homelessness if they are not under the jurisdiction of the juvenile court.
  - b) A nonminor who has not attained 22 years of age and is experiencing homelessness or is at reasonable risk of homelessness if they are not under the jurisdiction of the juvenile court, may petition the juvenile court in the same action in which the nonminor was previously found to be under the jurisdiction of the juvenile court, for a hearing to resume the dependency jurisdiction or to assume or resume transition jurisdiction.
  - c) At each review hearing for a NMD between 20 to 21 years of age, inclusive, the social worker shall include in the report for the hearing the NMD’s housing and whether the NMD is experiencing homelessness or is at reasonable risk of homelessness if they are not under the jurisdiction of the juvenile court.
  - d) A nonminor who is 21 years of age and experiencing homelessness or are at reasonable risk of homelessness if they are not under the jurisdiction of the juvenile court may be considered a NMD as defined in existing law.
  - e) A NMD under the jurisdiction of the juvenile court is eligible to receive Aid to Families with Dependent Children-Foster Care, Adoption Assistance Program, California Work

Opportunity and Responsibility to Kids (CalWORKs), and Kinship Guardianship Assistance Payment (Kin-GAP) benefits if they meet all other requirements.

- 5) Prohibits a nonminor who is 21 years of age and participates in a county guaranteed income program from being eligible for extended foster care services in this bill.
- 6) Makes Legislative findings and declarations related to the benefits of extended foster care for youths beyond 19 years of age to 21 years of age, and the intent to enact a pilot program for NMDs who are experiencing homelessness beyond 21 years of age to 22 years of age.

**EXISTING LAW:**

- 1) Provides federal programs and funding for state programs for foster and adopted children; at the election of a state, a state may receive federal participation if it extends its foster programs to NMDs who have not yet attained 21 years of age, provided certain conditions are met. (42 United States Code Section [U.S.C.] 675(8), 473(a))
- 2) Establishes a system of child welfare services, including foster care, for children who are abused or neglected or are at risk of being abused or neglected. (Welfare and Institutions Code Section [WIC] 202)
- 3) 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)
- 4) Establishes a system of juvenile dependency for children for specified reasons, and designates that a child who meets certain criteria is within the jurisdiction of the juvenile court and may be adjudged as a dependent child of the court, as specified. (WIC 300 *et seq.*)
- 5) Provides that if a court orders a child detained, the court shall state facts on which the decision is based, specify why removal was necessary, order temporary placement and care of the child to be vested with the county child welfare department pending a jurisdictional hearing or further order of the court, and order reunification services be provided as soon as possible, if appropriate. (WIC 319(g))
- 6) Defines “nonminor dependent” as a current foster youth or a nonminor under the transition jurisdiction of the court who is between 18 and 21 years old, turned 18 years old while under an order of foster care placement, is in foster care under the responsibility of the county welfare department, county probation department, or Indian Tribe, and is participating in a transitional independent living plan, as specified. (WIC 11400(v))
- 7) Provides that the court may have within its jurisdiction any NMD, between the age of majority and 21 years, as defined. Further provides that a NMD shall retain all of their legal decision-making authority as an adult, except as specified. (WIC 303(a) and (d))
- 8) Provides that, if a juvenile court terminates its jurisdiction over a NMD, the NMD remains under the general jurisdiction of the court to allow for a petition to resume jurisdiction. (WIC 303(b))

- 9) Requires the court to review the status of every minor or NMD in foster care at least once every six months, as specified. (WIC 366)
- 10) Requires the court, before exercising continuing jurisdiction over a nonminor, to find that the nonminor has been informed of their options, including the benefits of remaining in foster care and the right to petition to reenter foster care by resuming dependency jurisdiction. (WIC 391(e))
- 11) Requires a nonminor ages 18-21 to satisfy one or more of the following participation requirements to remain under a foster care order:
  - a) Completing secondary education or a program leading to an equivalent credential.
  - b) Enrolled in an institution that provides postsecondary or vocational education.
  - c) Participating in a program or activity designed to promote, or remove barriers to, employment.
  - d) Employed for at least 80 hours per month.
  - e) Incapable of doing any of the activities in a)-d) due to a medical condition, and that incapability is supported by regularly updated information in the case plan of the nonminor, as specified. (WIC 11403(b))
- 7) Requires a caseworker or other appropriate staff and other representatives of a foster youth or NMD at 18 years of age or older to provide the youth or NMD with a 90-day transition plan, at the direction of the youth or NMD, that includes options regarding housing, health insurance, education, workforce supports and other services, for when the youth or NMD exits foster care. (WIC 16501.1(g)(16)(B))
- 8) 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)
- 9) Provides that a petition to resume jurisdiction over a nonminor may be submitted to the court that retains general jurisdiction, as provided, or to the juvenile court in the county where the youth resides and that the court shall order a hearing be held within 15 judicial days of the date the petition was filed if there is a prima facie showing that the nonminor satisfies the following criteria:
  - a) Previously under juvenile court jurisdiction and was subject to an order for foster care placement at any time after the nonminor attained 18 years of age, and has not attained 21 years of age;
  - b) Intends to satisfy at least one of the conditions required to participate in extended foster care, as provided; and,

- c) Wants assistance either in maintaining or securing appropriate supervised placement, or is in need of immediate placement and agrees to supervised placement pursuant to the voluntary reentry agreement, as provided. (WIC 388(e)(2))

**FISCAL EFFECT:** According to the Senate Appropriations Committee analysis on May 18, 2023:

- Unknown General Fund (GF) costs, likely hundreds of thousands, for the Department of Social Services to administer the pilot program, including potential automation costs.
- Unknown GF costs to provide extended foster care services and benefits, depending on pilot program participation
- Unknown GF cost pressures to the extent the pilot program is expanded statewide.

**COMMENTS:**

**Background:** *Child Welfare Services (CWS)*. The CWS system is made up of multiple federal, state, and county agencies, the juvenile courts, and private social service agencies, all of which share the goals of providing for the safety, permanency, and well-being of children and their families. At the state level, CDSS receives federal funding to support state and county child welfare programs. CDSS also provides oversight and evaluation of local and statewide demonstration projects and statewide best practices training for social workers, develops program policies and regulations, provides direct agency adoption services, and oversees operation of the statewide automated Child Welfare Services/Case Management System, among other responsibilities. At the local level, each of California's 58 counties administers its own child welfare program. County governments are directly involved with children and families to address child abuse and neglect, keep families together, and place a child who is at risk or either a temporary or permanent out-of-home placement.

Child maltreatment includes physical abuse, sexual abuse, emotional abuse, general neglect, severe neglect, exploitation or caretaker incapacity. When suspicions of abuse or neglect arise, often as a result of a report to law enforcement or a county child welfare agency by a mandated reporter, like a healthcare provider or teacher, Child Protective Services is tasked with investigating the report. If the allegation of abuse or neglect is substantiated, a social worker then determines whether it is in the best interest of the child to remain in their parent's custody or be placed within the CWS system (i.e. placement outside of the home). If the court orders a child to be removed from the home, the county's juvenile dependency court holds legal jurisdiction, and the CWS system appoints a social worker to ensure that the needs of the youth are met. It is the state's goal to reunify a foster child or youth with their biological family whenever possible. In instances where reunification is not possible, it is the state's goal to provide a permanent placement alternative, such as adoption or guardianship, with other relatives or nonrelative extended family members, or with resource families.

In September 2022, the state's child welfare agencies received 442,264 reports of abuse or neglect. Of these, 69,652 reports contained allegations that were substantiated and 2,646 children were removed from their homes and placed into foster care via the CWS system. As of January 1, 2023, there are 52,265 youth between birth and up to 21 years of age old in foster care.

*Indian Child Welfare Act (ICWA).* Prior to the mid-1970s, Indian children faced high rates of removal, estimated to be as high as 25-35% of all Indian children, from their families, and subsequent placement in non-Indian homes. In response, Congress enacted federal legislation in 1978, ICWA (25 U.S.C. 1901 *et seq.*) to address a number of the issues related to the custody of Indian children and, ultimately, to ensure the preservation of Native American families, tribes, and tribal cultures. When a case is subject to ICWA, both the child and the parents are entitled to different, culturally appropriate services that may be available only to Native Americans. When a dependency case involves an Indian child, ICWA imposes substantive requirements that are different from those imposed under the Welfare and Institutions Code for non-Indian children. ICWA established minimum standards with which state courts must comply any time an Indian child is removed from their family or custodial home and placed in foster care or adoptive homes. It does not prohibit states from establishing higher standards. As of January 1, 2023, there were 669 Native American youth in foster care in California.

On June 15, 2023, the Supreme Court, in a 7-2 ruling, upheld ICWA to ensure Native American children in foster care or the adoption system reunite with members of their families and tribes. The origin of *Haaland v Brackeen* began in June 2016 when a 10-month old Navajo boy was separated from his mother due to struggles with substance abuse and placed in the home of a white, evangelical couple, Dr. Jennifer and Chad Brackeen, in Fort Worth, Texas. As the mother relocated to Texas from the reservation, a Texas state court ruled to terminate the parental rights of the infant's biological parents in 2017. Under the provisions of ICWA, the Navajo Nation, one of the two largest Native American tribes, stepped in to identify an unrelated Native family to take the infant in when the Brackeen's sought to adopt him. This prompted the couple to file suit in federal court to overturn ICWA on the grounds of racial discrimination and breaching equal protections. After a potential placement with a Navajo family fell through, the Brackeen's adopted the child, and are now seeking to adopt the child's 5-year old half-sister who has been living with the family since infancy. The Navajo Nation continues to oppose the adoption. Now the couple will pursue the race discrimination claim in the adoption proceedings in state court. In a concurring opinion, Justice Neil Gorsuch stated, "In adopting the ICWA, Congress exercised that lawful authority to secure the right of Indian parents to raise their families as they please; the right of Indian children to grow in their culture; and the right of Indian communities to resist fading into the twilight of history. All of that is keeping with the Constitution's original design."

According to the CDSS and the California Tribal Families Coalition, this bill permits tribes to participate in the pilot program. Specifically, this bill allows tribes with Title IV-E agreements to access funding for the purposes of this bill.

*Extended Foster Care.* Up until January 1, 2012, foster care services in California were only available to children under 18 years of age. Youth who "aged out" of the CWS system at 18 years old were required to navigate the challenges of young adulthood, including obtaining education, stable housing, and employment, with few services or supports available by the CWS system. In contrast, their peers who are not former foster youth may be receiving some kind of support from parents and extended families. Multiple studies document the overwhelming challenges that former foster youth face when they emancipate from foster care at 18 years old. Compared to young people who were not in foster care, foster youth fare poorly in terms of educational attainment, employment, economic self-sufficiency, and physical and mental health, and were more likely to enter the criminal justice system, experience poverty, and become homeless as they age out of foster care. Specifically, youth who age out of foster care are more likely not to have a high school diploma and are less likely to attend college, less likely to be employed, more likely to

rely on public assistance, more likely to have children before 21 years old and more likely to be arrested.

To address these dismal outcomes among foster youth who age out of foster care, federal and state legislation had been signed into law to permit youth to remain in foster care up to age 21. In October 2008, the federal government enacted the “Foster Connections to Success and Increasing Adoptions Act” (Public Law 110-351), which allowed states the opportunity to opt-in to new federal funding streams if they choose to provide foster care to 18-21-year-old youth. In response, California passed AB 12 (Beall), Chapter 559, Statutes of 2010, the “California Fostering Connections to Success Act” on September 30, 2010, which created the state’s extended foster care program and allowed eligible youth to voluntarily remain in foster care up to 21 years of age.

In order to be eligible to continue foster care benefits up to age 21, and at the six month hearing prior to a youth turning 18 years old, a NMD youth must meet the following requirements: continue under the jurisdiction of the juvenile court; sign a mutual agreement which commits both the nonminor and the placing agency to certain responsibilities; reside in an approved, supervised placement; work alongside their caseworker to prepare and participate in their transitional independent living case plan; and have their status reviewed every six months. In addition, pursuant to the federal Fostering Connections Act, a youth must meet one of five work or education-related eligibility criteria:

- Be enrolled in a high school or equivalent program;
- Be enrolled in a college, community college, or vocational program;
- Be employed at least 80 hours a month;
- Participate in a program or activity designed to remove barriers to employment; or,
- Be unable to do one of the above requirements due to a medical condition.

Under AB 12, NMDs who opt out of extended care and want to return before age 21 are able to petition to reenter, provided they meet the eligibility criteria set forth in federal and state law. When a NMD ages out of extended foster care at 21, state law also provides for various exit requirements to ensure the youth are provided with all the necessary information to thrive in their transition to adulthood.

This landmark piece of child welfare legislation in California and historical expansion of services to foster youth was intended to assist foster youth in their transition to adulthood. AB 12 also intended to bridge the gap between the intensive supervision of foster care for minors and unsupervised adulthood by maintaining a safety net of support, while providing the youth independence and additional educational or work opportunities. The University of Chicago’s Chapin Hill conducted the California Youth Transitions to Adulthood Study (CalYOUTH) in 2018 to address whether extending foster care up to age 21 influenced outcomes during the transition to adulthood. The study found that most young adults took advantage of the opportunity to remain in extended foster care; 75% of CalYOUTH participants were still in care at age 19 and 33% were still in care on or around their 21st birthday. The study also indicated that participants were generally satisfied with the services they received through extended care. A separate analysis by the University of Chicago’s Chapin Hill in 2021 assessed the relationship between extended foster care and youth’s outcomes at age 23, and found that each additional year in extended foster care:

- Increased the probability that youth completed a high school credential by about 8%;
- Increased their expected probability of enrolling in college by 5-12%;
- Increased the number of quarters that youth were employed between their 21st and 23rd birthday;
- Increased youths' total earnings between their 21st and 23rd birthday by about \$2,300-\$3,200;
- Increased the amount of money youth had in bank accounts by about \$650;
- Decreased the odds of being food insecure in the past 12 months by about 21%;
- Decreased the odds of being homeless or couch-surfing between the ages of 21 and 23 by about 19%;
- Increased the odds that youth felt they had enough people to turn to for emotional support, tangible support, and advice/guidance; and,
- Decreased the odds that youth had been arrested since their last CalYOUTH interview by about 28%.

Despite improved outcomes for youth who received additional years of help from the foster care system, many foster youth still face poor outcomes compared to their non-foster peers in other measures. A separate longitudinal study conducted by the University of Chicago's Chapin Hill in 2020 investigated the effects of California's extended foster care program following 727 young people over the course of seven years as they transitioned out of foster care and into early adulthood. The CalYOUTH study found that:

- At ages 19 and 21, more than one-third of youth reported not having enough money for clothes or shoes;
- At ages 19 and 21, about half of participants experienced at least one economic hardship;
- At age 19, about one-third of youth reported having their cell phone or telephone services shut off;
- At age 21, a quarter of youth did not have enough money for rent; and,
- At age 21, about one in ten young people experienced eviction or loss of their home.

These outcomes were worse for youth who were LGBTQ+, women, Black, Latinx, or reported a health or mental health condition. From the research conducted when the youth were 21 years old, they concluded: "In particular, our findings raise questions about the wisdom of abruptly curtailing services for these young people when they reach their 21st birthday. Our findings suggest that when COVID-19 is behind us, it will still be the case that many young adults in care could potentially benefit from ongoing support past their 21st birthday." This bill aims to address these findings by allowing foster youth to participate in extended foster care for an additional year up to 22 years of age through a three-year pilot program with at least three participating counties.

*Extended Foster Care Benefits for Tribes.* A lawsuit was filed in March 2023 by the Bear River Band of Rohnerville Rancheria and tribal member Madison Fisher claiming Humboldt County, the Humboldt County Department of Health and Human Services, and CDSS of unfairly denying Native American youth access to extended foster care benefits after turning 18 years old, despite being eligible for those benefits. According to the lawsuit, Fisher applied to extended foster care benefits upon her 18th birthday and was initially declared eligible. However, a few months later, Humboldt County deemed Fisher ineligible due to her receipt of tribal distributions. This denial of benefits excludes Native communities from receiving extended foster care services they otherwise would be eligible for, and harms Indigenous youth solely for receiving tribal distributions. Data shows that Native children are four times more likely to be in foster care than the general population, and in Humboldt County, Indigenous youth are especially overrepresented in the foster care system. According to court filings, not having access to extended foster care benefits has left Humboldt County's tribal member with "denied years of monetary and in-kind benefits they were legally entitled to, which has resulted in the loss of access to housing, education, and medical treatment."

**Author's Statement:** According to the author, "The COVID crisis has caused an unprecedented impact on our most vulnerable youth. Data shows a decline in outcomes resulting from the pandemic, making it clear that foster youth need a wider safety net. We owe it to them to provide the security they need to set them up for success as they transition to independence. Ultimately, [this bill] will give qualifying foster youth more time to address the effects of their trauma, make strides towards their education and employment opportunities and accumulate support before transitioning out of the system."

**Need for this bill:** 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. As a result, youth who are pushed out of the foster care system at age 21 face significantly more hurdles compared to their peers, including high rates of homelessness, incarceration, reliance on public assistance, and low rates of high school and postsecondary graduation.

"In recognition of the difficulties faced by young adults who age out of foster care by 21 years of old, the provisions of this bill seeks to improve outcomes among foster youth by extending foster care by an additional year through a three-year pilot program that targets youth who are experiencing homelessness or are at risk of substantial risk of experiencing homelessness. In essence, [this bill] seeks to mirror the type of continued guidance and assistance most young adults receive from their parents and families in their late teens and early twenties.

**Equity Implications:** This bill provides an opportunity for a foster youth to remain in extended foster care for an additional year from age 21 to age 22. As described earlier, youth exiting foster care do not enjoy the same familial safety net that their non-foster youth peers do.

California has the largest state foster care population in the U.S. and represent one of the most vulnerable groups. Foster youth also suffer poor educational and health outcomes. According to the Legislative Analyst's Office (LAO), in California, the populations reflected in foster care are predominantly youth of color, as 21% are Black and 50% are Latinx. Further highlighting the disproportionality comprising the foster youth population, the number of Black and Native American youth in foster care are four times larger than the number of the general population of



Black and Native American youth in California. The LAO also states that racial disproportionalities and disparities are present within initial allegations and persist at all levels of the system—becoming the most pronounced for youth in care. Additionally, LGBTQ+ youth are also overrepresented in foster care, according to research conducted in 2020, with 30% of foster youth identifying as lesbian, gay, bisexual, or questioning, and 5% identifying as transgender, compared to 11% and 1% of California’s youth not in foster care.

This bill seeks to provide extended foster care benefits up to 22 years of age to better prepare foster youth as they transition to independence. By creating a pilot program that targets youth experiencing homelessness or are at risk of homelessness, those who have already experienced the trauma of being removed from their homes would be granted additional time to achieve self-sufficiency. While this additional year of services can potentially help all foster youth, it can have a particularly deep impact on the marginalized population within foster care as they seek stability. This bill would ensure that foster youth in California have access to extended foster care services and support while in the system, and provides safeguards to ensure that they can transition after emancipation and achieve independence in adulthood.

**Double referral:** Should this bill pass out of this Committee, it will be referred to the Assembly Judiciary Committee.

#### **RELATED AND PRIOR LEGISLATION:**

***AB 867 (Friedman) of 2023***, authorizes foster youth to remain in extended foster care beyond the age of 21 for the limited purpose of compliance with specified verifications of the information, documents, and services that are required to be provided by the county welfare department to the foster youth prior to emancipation, and required a county to provide certain benefits to specified foster youth regardless of whether they are living in approved placements. *AB 867 is set to be heard by the Senate Human Services Committee on June 19, 2023.*

***AB 2306 (Cooley) of 2022***, would have expanded the Independent Living Program to include current and former foster youth up to 22 years of age, subject to an appropriation and to federal approval. Would have expanded the requirement for counties to provide stipends that assist youth with specified independent living needs to those who have exited the foster care system at or after 18 years of age, to include former foster youth up to 25 years of age. *AB 2306 was vetoed by Governor Newsom.*

***AB 2189 (Friedman) of 2022***, was substantively similar to AB 867 (Friedman, 2023), and would have authorized foster youth to remain in extended foster care beyond the age of 21 for the limited purpose of compliance with specified verifications of the information, documents, and services that are required to be provided by the county welfare department to the foster youth prior to emancipation, and required a county to provide certain benefits to specified foster youth regardless of whether they are living in approved placements. *AB 2189 was vetoed by Governor Newsom.*

***SB 912 (Beall) of 2021***, would have permitted the juvenile court to retain jurisdiction over any ward or dependent child who is eligible to receive support as a NMD for any state of emergency declared by the Governor on or after January 1, 2021, and would have allowed a NMD who turns 21 years of age while a state of emergency is in effect to continue to receive support as a NMD for six months from the date of the declaration, as provided. *SB 912 was vetoed by Governor Newsom.*

***SB 100 (Hurtado) of 2021***, would have required CDSS to convene a working group to examine the extended foster care program and make recommendations for improvements to the program, and to submit a report to the Legislature with recommendations on or before July 1, 2022. *SB 100 was held on the Senate Appropriations Committee suspense file.*

***AB 748 (Gipson), Chapter 682, Statute of 2019***, provided that a youth who was subject to an order for foster care before they reached 18 years of age, but was not yet adjudged a dependent of the juvenile court before reaching their 18th birthday, is eligible for extended foster care benefits.

***AB 2337 (Gipson), Chapter 539, Statutes of 2018***, expanded the circumstances under which NMDs under the age of 21 who were previously a dependent or delinquent of the juvenile court may petition to assume dependency jurisdiction to include youth who would have otherwise been eligible but for receiving Supplemental Security Income benefits in lieu of foster care payments.

***AB 212 (Beall), Chapter 459, Statutes of 2011***, made clarifying and substantive changes to the California Fostering Connections to Success Act of 2020 in order to ensure proper implementation on January 1, 2012, and also make changes to existing state laws in order to comply with various provisions of federal law.

***AB 12 (Beall), Chapter 559, Statutes of 2010***, extended transitional foster care service to eligible youth between 18 and 21 years of age, and required California to seek federal financial participation in kinship guardianship assistance payments.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Black Health Network  
Children Now  
County of Santa Clara  
First Place for Youth  
National Association of Social Workers, California Chapter

**Opposition**

None on file

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