
SENATE COMMITTEE ON HUMAN SERVICES

Senator Hurtado, Chair
2021 - 2022 Regular

Bill No: AB 829
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Urgency: No
Consultant: Marisa Shea

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Fiscal: Yes

Subject: Foster children: immigration counsel

SUMMARY

This bill requires a county to make its best efforts to provide an undocumented minor or nonminor dependent (NMD) in foster care under the jurisdiction of the juvenile court with access to immigration legal services. The bill also requires, on or before January 1, 2023, the California Department of Social Services (CDSS) to develop a process for tracking the number of undocumented minors and NMDs in foster care and whether those youth have been provided access to immigration services based on information reported to CDSS by the counties, and further requires CDSS to report to the Legislature and post on its internet website this de-identified information. Furthermore, the bill requires a placing agency that becomes aware of a dependent child or NMDs undocumented immigration status to notify the child or NMD's attorney of their immigration status within five business days.

ABSTRACT

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 who have been abused or neglected, as specified. (*WIC 202*)
- 2) 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.*)
- 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, 11400, 11402, 11403*)
- 4) Defines a "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) Requires the court, if a child or NMD is not represented by counsel in a juvenile dependency proceeding, to appoint counsel for the child or NMD, unless the court finds that the child or NMD would not benefit from the appointment of counsel. Further requires that the dependent's counsel be charged in general with the representation of the child's interests and requires the counsel to investigate the interests of the child beyond the scope of the juvenile proceeding and report to the court other interest of the child that may need to be protected by the initiation of other administrative or judicial proceeding. (*WIC 317(c), (e)*)
- 6) Defines, under federal law, a "special immigrant juvenile" as a person under 21 who is declared a dependent by a juvenile court or committed to the custody of a state agency or a court-appointed individual, whose reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law, and whose return to their county of nationality or last habitual residence is not in the juvenile's best interest. Allows such a person to obtain special immigrant juvenile status (SIJS) and, based on that, apply for a visa for lawful permanent residency. (*8 U.S.C. Section 1101(a)(27)(J); 8 C.F.R. Section 204.11 (2021)*)
- 7) Defines "unaccompanied undocumented minor" in state law to mean the same as "unaccompanied alien children" in federal law, which defines an unaccompanied alien child to mean a child who has no lawful immigration status in the United States, had not yet reached 18 years of age, and with respect to whom either there is no legal parent or guardian in the United States, or no parent or legal guardian in the United States is available to provide care and physical custody. (*WIC 13300(c); 6 U.S.C. Section 279(g)(2)*)
- 8) Requires CDSS, subject to the availability of funding, to contract with qualified non-profit legal services organizations to provide legal services, including culturally and linguistically appropriate services, to unaccompanied undocumented minors, as defined, who are transferred to the care and custody of the federal Office of Refugee Resettlement and who are present in the state. (*WIC 13300; 13301*)

This Bill:

- 1) Makes legislative findings and declarations related to the likelihood of undocumented children in foster care's ability to qualify for immigration relief, the difficulty of obtaining that relief without an attorney, the timeline for the filing for such relief, and ways the dependency system could aid undocumented foster youth in seeking immigration relief.
- 2) States it is the intent of the Legislature to create accountability in ensuring that foster children emancipating from foster care have received all immigration relief to which they are entitled and that the Legislature intends to identify a source of funding to enable counties to provide immigration counsel to all children in foster care.

- 3) Requires counties to make their best efforts to provide an undocumented minor or NMD in foster care under the jurisdiction of the juvenile court with access to immigration legal services.
- 4) Requires CDSS to develop a process, on or before January 1, 2023, to track, and for counties to report, the number of undocumented minors and NMDs in foster care under the jurisdiction of the juvenile court and whether the undocumented minors and NMDs in foster care have been provided access to immigration legal services.
- 5) Requires counties to report to CDSS, on or before April 1, 2023 and annually thereafter, de-identified data related to the number of undocumented minors and NMDs in foster care and whether those youth have been provided access to immigration legal services, as provided. Further requires CDSS, by July 1, 2023 and annually thereafter, to submit a report to the Legislature containing the de-identified information submitted by the counties and publish a report on its internet website containing the information submitted by the counties.
- 6) Requires a county to report to CDSS, on or before June 1, 2022, its internal process for providing undocumented minors and NMDs in foster care access to immigration legal services. Further requires the county to specify in this report the additional resources needed to fulfill this need if the current county system is inadequate to ensure that all undocumented minors and NMDs in foster care are provided access to immigration legal services.
- 7) Requires a placing agency to notify the dependent child or NMD's attorney of the child's or NMD's undocumented status when the placing agency becomes aware of the child or NMD's immigration status. Further requires electronic or telephonic notice to be provided to the attorney within five business days of the agency learning of the dependent child or NMD's immigration status.

FISCAL IMPACT

According to an April 28, 2021 analysis prepared by the Assembly Appropriations Committee, the April 5, 2021 version of this bill would have the following fiscal impact:

- 1) The following state-mandated local costs are not reimbursable, but instead must be funded by the state pursuant to Proposition 30.
 - a) Ongoing annual costs, potentially in the hundreds of thousands of General Fund (GF) dollars statewide, for each county to make its "best efforts" to provide undocumented foster youth under the jurisdiction of the juvenile court with access to immigration legal services. These costs are difficult to quantify because the bill does not define "best efforts," but will depend on the number of undocumented youth involved, the services available in each county and amount of staff time each county devotes to these efforts.

- b) One-time costs, unknown, but likely significant in larger counties, for each county to develop an information tracking process by June 1, 2022. Likely minor costs for each county to annually report the information obtained to CDSS.
- c) One-time costs, likely in the high tens of thousands of dollars to the low hundreds of thousands of dollars (GF) statewide, for each county to report to CDSS, by June 1, 2022, on its internal process for providing access to immigration legal services to undocumented foster youth in foster care under the jurisdiction of the juvenile court and, if necessary, to specify additional resources needed.
- d) Minor costs, likely in the low tens of thousands of dollars (GF) annually statewide, for county social workers to notify an undocumented child's attorney within 72 hours of learning of the child's immigration status.

Proposition 30 (November 2012), requires legislation enacted after September 30, 2012, that has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by realignment (including child welfare services and foster care) to apply only to local agencies to the extent the state provides annual funding for the cost increase.

- 2) Minor and absorbable costs to CDSS to receive county data and post the required report on its internet website.

BACKGROUND AND DISCUSSION

Purpose of the Bill:

According to the author, "the federal Special Immigrant Juvenile Status (SIJS) was created to help abused and neglected undocumented children obtain lawful permanent residency in the United States in order to provide greater stability to this underserved demographic. SIJS was established in 1990 for the purpose of protecting foster youth who are unable to reunite with their families, and serves as a primary route for undocumented foster child to gain lawful permanent immigration status in the United States, however; some children are unaware they can only apply for SIJS while in foster care, resulting in them unintentionally forfeiting their opportunity to obtain legal services through the program upon exiting the system."

The author goes on to note that "AB 829 requires counties to provide information to the California Department of Social Services regarding current procedures to identify how many undocumented foster youth or youth who are nonminor dependents they have in their care and provide these youth with immigration legal resources. Counties then must confirm whether the undocumented minors and nonminor dependents in foster care have been provided access to immigration legal services. The bill requires counties to report to the state whether gaps in resources exist to provide these resources to youth and for counties to make their best efforts to provide these youth with access to immigration legal services. This bill will ensure that undocumented youth in California's foster care system are provided with essential immigration legal services necessary to seek lawful residency in the United States and inform the State about current gaps in resources to achieve this."

Child Welfare Services (CWS)

California's child welfare services (CWS) system is an essential component of the state's safety net. Social workers in each county who receive reports of abuse or neglect, investigate and resolve those reports. When a case is substantiated, a family is either provided with services to ensure a child's well-being and avoid court involvement, or a child is removed and placed into foster care. In 2019, the state's child welfare agencies received 477,614 reports of abuse or neglect. Of these, 69,652 reports contained allegations that were substantiated and 28,646 children were removed from their homes and placed into foster care via the CWS system. As of October 1, 2020, there were 60,045 children in California's CWS system.

Abused and neglected children who have been removed from their homes fall under the jurisdiction of the county's juvenile dependency court. The dependency court holds legal jurisdiction over the child, while the child is served by a CWS system social worker. This system seeks to ensure the safety and protection of these children, and where possible, preserve and strengthen families through visitation and family reunification. The CWS system provides multiple opportunities for the custody of a foster child, or the child's placement outside of the home, to be evaluated, reviewed and determined by the judicial system, in consultation with the child's social worker to help provide the best possible services to the child. 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 the second highest placement priority of the CWS system being to unite children with other relatives or nonrelative extended family members.

Children and NMDs under the jurisdiction of the dependency court through the CWS system are represented by counsel. Existing law requires the court to appoint counsel for the child or NMD if they are not already represented, unless the court finds that the child or NMD would not benefit from the appointment of counsel. Such a finding would be incredibly rare, since counsel represents the youth's interests to the court. Additionally, existing law requires the child or NMD's dependency counsel to investigate the interests of the child or NMD beyond the scope of the juvenile proceeding, and report to the court other interests of the child that may need to be protected by the initiation of other administrative or judicial proceedings.

This bill would require a placing agency to notify the child or NMD's dependency counsel of the child or NMD's undocumented immigration status within five business days of the placing agency becoming aware of the child or NMD's immigration status. As highlighted by this bill's request to provide immigration attorneys, the dependency counsel may not be able to address the child or NMD's immigration status on their own. However, knowledge of the child or NMD's immigration status allows the dependency counsel to advocate on behalf of the child's interests to the court regarding the child or NMD's need for additional assistance in accessing legal remedies for their immigration status, such the SIJS discussed below.

Special Immigrant Juvenile Status (SIJS)

SIJS is a federal immigration classification that may help undocumented, vulnerable children and youth remain in the United States with a permanent, legal resident status. Under the Trafficking

Victims Protection Reauthorization Act of 2008, any unmarried undocumented person under age 21 who has been abused, neglected or abandoned by a parent may seek classification as a SIJS and then immediately apply for lawful permanent resident status. A youth, or their representative, must apply to the United States Citizenship and Immigration Service (USCIS) to qualify for SIJS status. However, in order to be eligible for SIJS with USCIS, a state family, juvenile, or probate court must first find the following:

- The child is a dependent of a juvenile court or committed to the custody of a state agency or a court-appointed individual;
- Reunification with one or both of the child's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law; and
- Return to the child's county of nationality or last habitual residence is not in the child's best interest.

Originally, SIJS was applied only to children under the jurisdiction of the juvenile court. The required findings were expanded in 2008 to include children with a court-appointed custodian, thus allowing the required findings to be made on behalf of children with guardianships established by a probate court and custodial arrangements established by a family court. This significantly expanded the number of immigrant children who are eligible for SIJS. This bill focuses on youth in CWS system, as it requires counties to make best efforts to provide undocumented minor and NMDs in foster care under the jurisdiction of the juvenile court with access to immigration legal services. This is important to undocumented children and youth in foster care being eligible for SIJS because they cannot apply to USCIS for SIJS until the appropriate state court, which in the case of children and youth in foster care would be the juvenile court, makes the requisite findings.

CDSS Immigration Services Funding and Services

Within CDSS, the Immigration Services Unit oversees programs and funding initiatives aimed at supporting legal services, outreach and education, and other immigrant integration efforts. Existing law authorizes CDSS, through the efforts of this Unit, to award Immigration Services Funding to qualified nonprofit organizations for one or more, of the following six service categories: services to assist applicants seeking Deferred Action for Childhood Arrival (DACA) status; services to assist applicants seeking naturalizations; services to assist applicants seeking other immigration remedies; legal training and technical assistance services; education and outreach activities; and services to assist individuals with removal defense. (*See WIC 13302-13306*)

As of January 3, 2019, CDSS has offered \$43,823,900 in funding to 101 nonprofit organizations for Immigration Services for Fiscal Year (FY) 2018-19. CDSS received requests for funds for FY 2018-19 that totaled \$77,132,680. They are limited to funding only qualified nonprofit organizations that provide services to immigrants who reside, or formerly resided, in the state of California. The nonprofit organizations must have a minimum of three years' experience handling immigration cases. Additionally, these organizations must be recognized and accredited by the Board of Immigration Appeals under the U.S. Department of Justice's Executive Office for Immigration Review or meet the requirements to receive funding from the Trust Fund Program administered by the State Bar of California, as specified.

In addition to Immigration Services Funding, CDSS is authorized to contract with and provide funding to nonprofit legal services organizations to provide legal services to eligible UUMs. UUMs are undocumented children and youth who have come to the United States without a parent or guardian. CDSS serves those who are in California and, upon being apprehended, are either transferred to the care and custody of the federal Office of Refugee Resettlement or are living with a sponsor. According to CDSS, the funding for this program “is for the sole purpose of providing legal representation for UUMs in the filing of, preparation for, and representation in administrative and/or judicial proceedings for the following immigration statuses: asylum, T-Visa, U-Visa, SIJS and/or other affirmative remedies.” The legal services include culturally and linguistically appropriate services provided by attorneys, paralegals, interpreters, and other support staff for state court proceedings, federal immigration proceedings, and any appeals arising from those proceedings. For FY 2018-19, CDSS awarded \$2.9 million to 23 nonprofit legal organizations across the state, with an expected total caseload of 580 UUMs at a cost of \$5,000 each.

CDSS also contains the Refugee Programs Bureau which provides state-level leadership and coordination of programs and services to help refugees, and some other special visa holders, successfully resettle within California and assist with the integration of other vulnerable populations, including but not limited to: certified human trafficking victims, Afghan and Iraqi Special Immigrant Visa holders, asylees, Cuban and Haitian entrants, and unaccompanied refugee minors. The RPB also oversees the following programs: the California Newcomer Education and Well-Being Project; the Refugee Resettlement Program, including RCA, Refugee Medical Assistance, and Refugee Support Services; the Refugee School Impact Program; the Repatriation Program; the Services to Older Refugees Program; the Trafficking and Crime Victims Assistance Program; the Unaccompanied Refugee Minors Program; and the Youth Mentoring Project.

Finally, California has authorized the provision of food assistance benefits and refugee cash assistance payments to qualifying noncitizens. These programs provide eligible noncitizens with cash benefits to assist in the purchase of healthy food, housing costs, and other basic needs, as well as employment services and other social services designed to help the qualifying noncitizens become self-sufficient members of their communities. These programs are similar to public social services programs provided to eligible citizens and are overseen by CDSS.

This bill would require CDSS to develop a process to track, based on information reported by the counties, the number of undocumented minor and NMDs in foster care under the jurisdiction of the juvenile court and whether those youth have been provided access to immigration legal services. The bill would further require CDSS to report to the Legislature and post on its internet website de-identified data related to the number of undocumented youth in care and their access to immigration legal services, as provided. The bill would also require counties to report to CDSS their internal processes for providing undocumented minors and NMDs in foster care access to immigration legal services and what additional resources the county would need to ensure that all undocumented minors and NMDs are provided that access. These provisions of the bill would provide CDSS, and the Legislature, with a better understanding of the true scope of this need for potential future funding.

Related/Prior Legislation:

AB 1461 (Reyes, 2021) provides that applicants who have completed their formal application with the appropriate federal agency for status or relief under the federal Violence Against Women Act, SIJS, or asylum status are eligible for certain public social services and health care services offered through current law to certain noncitizen survivors of trafficking and serious crimes. AB 1461 is set to be heard by this committee on June 22, 2021.

AB 1324 (Levine, 2019), as heard by this committee, would have required CDSS, if funding is available, to contract with qualified nonprofit legal services organizations to provide legal services to undocumented immigrant dependent children or NMDs of the juvenile court or who have orders for placement through the juvenile court. AB 1324 would also have required the placing agency to notify the child's or NMD's attorney of the child's or youth's immigration status, as provided. AB 1324 was later amended out of this committee's jurisdiction and held in the Senate Health Committee.

SB 873 (Senate Committee on Budget and Fiscal Review, Chapter 685, Statutes 2014) required CDSS, subject to the availability of funding, to contract with qualified non-profit legal services organizations to provide legal services, including culturally and linguistically appropriate services, to unaccompanied undocumented minors, as defined, who are transferred to the care and custody of the federal Office of Refugee Resettlement and who are present in the state.

COMMENTS

This bill seeks to address a unique challenge faced by undocumented minors and NMDs in the state's CWS system.

Under current law, undocumented youth who are under the jurisdiction of the juvenile court may be eligible for SIJS, putting them on a path to permanent legal status and citizenship. This enables the youth to stay in the United States and access a variety of public social benefit programs, health care, higher education supports, among other things. Youth seeking SIJS must first have a state court, including a juvenile court, make certain findings regarding their status as a dependent, inability to reunify with their parents or guardians, and that returning to their country of citizenship or prior residence would not be in their best interest. Only after these findings have been made can a youth apply to USCIS for SIJS. Thus, undocumented foster youth could potentially achieve permanent legal status in the United States if necessary findings are made by the juvenile court and the youth then applies for SIJS through USCIS. However, according to advocates, many youth in the CWS system are unaware of this pathway to citizenship or unsure how to complete the steps necessary to access to SIJS.

This bill attempts to get at this issue through a few different methods. First, it would require a county to make its "best efforts" to provide an undocumented foster youth with access to immigration legal services. By connecting youth to immigration legal services, the youth can be made aware of SIJS and helped with meeting the requirements of the SIJS process. There are currently ongoing conversations among stakeholders regarding the specifics of this key provision. The author's reported intent with this bill is to connect youth in a county's CWS system who the county knows to be undocumented to necessary immigration legal services. Counties do not provide immigration legal services, but are considered the best entity to connect these youth to those services. Clarifying language may be needed to ensure the author's intent is

correctly interpreted, and the language of this bill is not seen as requiring counties to directly provide immigration legal services.

Additionally, the bill requires a placing agency that is aware of a foster youth's undocumented status to notify the youth's counsel of that immigration status within five business days. By making the attorney aware of the youth's immigration status, the dependency counsel can advocate on the youth's behalf to the juvenile court for connection to appropriate services and for the finding by the juvenile court that is necessary for the youth to apply for SIJS. This provision was found in an early version of AB 1324 (Levine, 2019), which was later gut and amended to address a different policy area impacted by the COVID-19 pandemic.

Finally, the bill requires counties to report certain de-identified information to CDSS regarding the number of youth in their CWS system who are undocumented, whether those youth have had access to immigration legal services, and what actions the county takes to connect those youth to immigration legal services. By tracking and reporting this information as provided for by this bill CDSS and the Legislature will have a better understanding of the size of this population within the state's CWS system. This would better inform future funding requests or other efforts to address the unique needs of this population.

PRIOR VOTES

Assembly Floor:	68 - 0
Assembly Appropriations Committee:	14 - 0
Assembly Human Services Committee:	7 - 0

POSITIONS

Support:

Alliance for Children's Rights
 Children Now
 Disability Rights California
 Los Angeles County Office of Education
 National Association of Social Workers, California Chapter
 San Diego; County of

Oppose:

None received.

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