
THIRD READING

Bill No: AB 829
Author: Levine (D), et al.
Amended: 8/31/21 in Senate
Vote: 21

SENATE HUMAN SERVICES COMMITTEE: 5-0, 6/22/21
AYES: Hurtado, Jones, Cortese, Kamlager, Pan

SENATE JUDICIARY COMMITTEE: 11-0, 7/13/21
AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Jones, Laird, Skinner, Stern, Wieckowski

SENATE APPROPRIATIONS COMMITTEE: 6-0, 8/26/21
AYES: Portantino, Bradford, Jones, Kamlager, Laird, McGuire
NO VOTE RECORDED: Bates

ASSEMBLY FLOOR: 68-0, 5/27/21 - See last page for vote

SUBJECT: Foster children: immigration counsel

SOURCE: Children's Law Center of California
Law Foundation of Silicon Valley
Legal Services for Children

DIGEST: This bill expands on the Legislature's efforts to help unaccompanied minors to obtain immigration relief they are entitled to under the law.

Senate Floor Amendments as of 8/31/21 strike provisions from the bill that would have required the counties to report specified information to the California Department of Social Services (CDSS) for CDSS to collect, track, and report to the Legislature, as provided. These amendments were requested by CDSS based on feasibility concerns.

ANALYSIS:

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” (NMD) 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 country 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 the California Department of Social Services (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) Specifies that it is the intent of the Legislature in enacting this act to create accountability in ensuring that foster children emancipating from foster care have received all immigration relief to which they are entitled. As well as specifies that it is the intent of the Legislature to identify a source of funding to enable counties to provide immigration counsel to all children in foster care.
- 3) Provides that a county shall make its best efforts to provide an undocumented minor or nonminor dependent in foster care under the jurisdiction of the juvenile court with access to immigration legal services. Further specifies that this may be provided by the child welfare agency through outside legal service providers.
- 4) Requires a placing agency, when the agency becomes aware that a dependent child or a NMD is an undocumented immigrant, notify the dependent child’s or NMD’s attorney that the dependent child or nonminor dependent is an undocumented immigrant. Allows electronic or telephonic notice utilized and requires the attorney receive notice within five business days of learning of the dependent child’s or nonminor dependent’s immigration status.

- 5) Strikes a sunset date from existing probate code, which indefinitely allows a nonprofit charitable corporation that meets set requirements act as the guardian of a minor for the purpose of filing for a SIJS visa, as proved.
- 6) Makes nonsubstantive and conforming changes.

Comments

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 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 requires a placing agency to notify the child or NMD's dependency counsel of the child or NMD's undocumented immigration status, as provided. 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 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.

Related/Prior Legislation

AB 1324 (Levine, 2019) 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 the Senate Human Services Committee's jurisdiction and held in the Senate Health Committee.

SB 873 (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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, CDSS reports the following costs of implementing this bill which would increase costs for counties to meet the new notification, data collection, and reporting requirements:

- Local assistance fiscal impact of \$54,000 General Fund (GF) (\$76,000 total funds) in fiscal year (FY) 2021-22 and ongoing annual costs of \$37,000 GF (\$52,000 total funds)
- Additional automation costs to allow for the recording of data on the provision of access to immigration legal services would be approximately \$2.1 million General Fund.

SUPPORT: (Verified 8/31/21)

Children’s Law Center of California (co-source)
 Law Foundation of Silicon Valley (co-source)
 Legal Services for Children (co-source)
 Alliance for Children’s Rights
 American Academy of Pediatrics, California
 California Court Appointed Special Advocate Association
 CaliforniaHealth+ Advocates
 Children NOW
 County of San Diego
 Court Appointed Special Advocate Association of Los Angeles
 Disability Rights California
 John Burton Advocates for Youth
 Kids in Need of Defense
 Los Angeles County Office of Education
 National Association of Social Workers, California Chapter

OPPOSITION: (Verified 8/31/21)

None received

ASSEMBLY FLOOR: 68-0, 5/27/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Choi, Cooley, Cooper, Cunningham, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lackey, Lee, Levine, Low, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Valladares, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Bigelow, Chen, Megan Dahle, Gallagher, Kiley, Maienschein, Nguyen, Seyarto, Smith, Voepel

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