

CONCURRENCE IN SENATE AMENDMENTS

AB 426 (Jackson)

As Amended September 1, 2023

Majority vote

SUMMARY

Authorizes the California Department of Social Services (CDSS) to assess an immediate civil penalty in the amount of \$1,000 per day for providing unlicensed residential care to children. Requires CDSS to inform the County Welfare Director and the Board of Supervisors by written notice identifying the legal compliance issues if a county is failing to comply with current law and CDSS determines that county action is necessary.

Senate Amendments

- 1) Delete provisions related to housing.
- 2) Authorize a person operating a community care facility without a license and providing residential care to children to be assessed an immediate civil penalty in the amount of \$1,000 per day of the violation.
- 3) Define a "person" to mean an individual, firm, association, organization, partnership, business trust, corporation, limited liability company, company, or political subdivision of the state.
- 4) Require the CDSS Director, if they are informed that a county is failing to comply with any provision of law or regulation pertaining to a program administered by CDSS, and the Director determines that formal action, as described, is not yet warranted but that county action is necessary to correct the reported failure, to inform the County Welfare Director and the board of supervisors by written notice.
- 5) Require the written notice to, at a minimum, identify the legal compliance issues and provide a minimum of 10 days for county response.

COMMENTS

Child Welfare Services (CWS). California's 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 (CPS) 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 to 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. California's CWS provided on behalf of each child represent a continuum of services, including emergency response services, family preservation services, family maintenance services, family reunification services, and permanent placement services, including supportive transition services, with the child's individual case plan being the guiding principle in the provision of these services. The case plan is required to be developed within a maximum of 60 days of the initial removal of the child. Prevention services such as substance use disorder treatment and in-home parenting support are provided to families who are at risk of child

removal. As of October 1, 2022, there were 53,371 youth between the ages of 0 and 21 placed in California's CWS system.

California's CWS programs are administered by the 58 individual counties which means that each county organizes and operates its own program of child protection based on local needs while complying with state and federal regulations. Counties are the primary governmental entities that interact with children and families when addressing issues of child abuse and neglect. Counties, either directly or through providers, are responsible for obtaining or providing the interventions and applicable services to protect the well-being of children and to help families address issues of child abuse and neglect. CDSS monitors and provides support in the counties efforts to best serve children and families.

Continuum of Care Reform (CCR). Beginning in 2015, California enacted legislation, known as CCR, to improve placement and treatment options for youth in foster care. AB 403 (Stone), Chapter 773, Statutes of 2015, sponsored by 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.

As part of the reforms set forth by CCR, the Resource Family Approval (RFA) process was established. The RFA process is a unified, family-friendly, and child-centered process that combines elements of foster parent licensing, relative approval, and adoption/guardianship approval processes. The RFA process includes a psychosocial assessment, home environment check, and training for all resource families (formerly known as foster families), including relatives, in order to ensure that caregivers are equipped to best meet the needs of youth in foster care. RFA is also a route to direct permanency for caregivers who wish to adopt or be guardians of youth in care, as the RFA process includes elements required by both the adoption and guardianship processes.

Existing law requires the juvenile court, during the dispositional hearing for a dependent child, to make a finding that the child's social worker has exercised due diligence in identifying, locating and notifying the child's relatives. Effective January 1, 2017, all new relative home placements were required to meet RFA standards and counties are encouraged to consider the likelihood that a relative will be able to meet those standards when evaluating that possibility. Existing law also provides for a process to place with a relative, either on an emergency basis or based on a compelling reason, prior to full RFA approval.

Family finding and due diligence. It has long been the goal of the CWS system to preserve familial ties whenever possible. Under certain circumstances, family maintenance services are provided to families in order to prevent the removal of children from their parents' home, including family therapy, parenting classes, or substance use treatment. However, in instances when a youth is removed from the custody of their parents and placed temporarily in an out-of-home placement through the foster care system, county social workers are required to locate any relatives or nonrelative extended family members who may serve as caregivers to the youth.

Data from the California Child Welfare Indicators Project show that in October 2021, the total number of all children in foster care for 24 months or longer, including foster children 18 years

of age and older and foster children living with relatives, was 27,475, or 46% of all children in foster care.

Penalties for Placement in Unlicensed Facilities. Generally when youth are found to have been placed in an unlicensed facility, CDSS issues a notice of violation of law and gives the operator an opportunity to submit an application. If an application is not submitted, then civil penalties may be assessed. It is unclear how often violations are noticed and if/when civil penalties have been assessed and enforced.

Under existing law, the civil penalty is \$200 per day. This amount has not been updated since 1985. Using the United States Bureau of Labor Statistics inflation calculator, the fine adjusted for inflation should be \$596. This bill proposes to increase the fine for housing children in an unlicensed facility to \$1,000 per day.

According to the Author

"Youth who have been removed from their home and placed into foster care are one of the most vulnerable populations in our state. Yet, time and time again California has turned a blind eye while counties across the state continue to house foster youth in inappropriate settings that are not conducive to their safety, permanency, and well-being. In 2021, there were reports of Fresno County housing children who were waiting to be placed in foster homes inside child welfare offices and sleeping on floors and desks. Most recently, reports surfaced that since August of 2022, Sacramento County has placed foster youth in a former juvenile detention facility that is unlicensed, and in violation of multiple health, safety, and fire code laws, claiming it is the safest and best option as they continue to seek viable solutions for placements in licensed settings. As a state, it is our duty and responsibility to ensure foster youth are not put in harm's way. When we allow counties to house foster youth in unfit facilities, we are not only telling youth that their well-being is not a priority, but we are signaling to them that residing in detention centers is their inevitable future."

Arguments in Support

According to Youth Law Center, "[This bill], as amended, takes an important step toward bringing more accountability to our system and clarifying the state's role in stepping in and ensuring youth are cared for when counties and facilities do not follow the law and use unlicensed placements. We believe that the updated fines and clarification regarding the state's role in enforcement of county responsibilities will help move toward a safer and more supportive system. We wish to be clear, however, that this bill is indeed only a first step. Additional comprehensive reforms are necessary to address the root causes of overuse and misuse of congregate care facilities. This bill includes several practical improvements and we hope that it begins an important discussion around dealing with the system's structural issues, particularly in ways that are not short-sighted such as establishing new institutional facilities or increasing the number of available beds in these facilities."

Arguments in Opposition

No opposition on file

FISCAL COMMENTS

According to Senate Appropriations Committee on September 1, 2023, CDSS estimates no fiscal impact.

VOTES:

ASM HOUSING AND COMMUNITY DEVELOPMENT: 8-0-0

YES: Wicks, Joe Patterson, Wendy Carrillo, Gabriel, Juan Carrillo, Quirk-Silva, Sanchez, Ward

ASM APPROPRIATIONS: 11-0-5

YES: Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Papan, Pellerin, Weber, Ortega

ABS, ABST OR NV: Megan Dahle, Dixon, Mathis, Robert Rivas, Sanchez

ASSEMBLY FLOOR: 77-0-3

YES: Addis, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Chen, Connolly, Megan Dahle, Davies, Dixon, Essayli, Flora, Mike Fong, Vince Fong, Friedman, Gabriel, Gallagher, Garcia, Gipson, Grayson, Haney, Hart, Holden, Hoover, Irwin, Jackson, Jones-Sawyer, Kalra, Lackey, Lee, Low, Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Jim Patterson, Joe Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Sanchez, Santiago, Schiavo, Soria, Ta, Ting, Valencia, Villapudua, Waldron, Wallis, Ward, Weber, Wicks, Wilson, Wood, Zbur, Rendon

ABS, ABST OR NV: Aguiar-Curry, Mathis, Papan

SENATE FLOOR: 30-7-3

YES: Allen, Alvarado-Gil, Archuleta, Atkins, Blakespear, Bradford, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hurtado, Laird, Limón, McGuire, Menjivar, Min, Newman, Padilla, Portantino, Roth, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener

NO: Ashby, Jones, Nguyen, Niello, Ochoa Bogh, Seyarto, Wilk

ABS, ABST OR NV: Becker, Caballero, Rubio

UPDATED

VERSION: September 1, 2023

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