
SENATE COMMITTEE ON HUMAN SERVICES

Senator Arreguín, Chair

2025 - 2026 Regular

Bill No: AB 1261

Author: Bonta

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Urgency: No

Consultant: Heather Hopkins

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Fiscal: Yes

Subject: Immigration: unaccompanied undocumented minors: right to legal counsel

SUMMARY

This bill requires the state to provide legal counsel to unaccompanied undocumented minors in the physical custody of the federal Office of Refugee Resettlement and present in California or residing with a family member or other sponsor in California. Requires the California Department of Social Services (CDSS) to contract with nonprofits legal services organizations and offices of the public defender to provide these legal services.

ABSTRACT

Existing Law:

- 1) Requires CDSS, subject to the availability of funding from the annual Budget Act, to contract with qualified nonprofit legal services organizations to provide legal services to unaccompanied undocumented minors who are transferred to the care and custody of the federal Office of Refugee Resettlement and who are present in this state, for the sole purpose of providing legal representation to unaccompanied undocumented minors who are in the physical custody of the federal Office of Refugee Resettlement or who are residing with a family member or other sponsor. (*Welfare and Institutions Code (WIC) 13300(a), 13300(b)*)
- 2) Defines “legal services” to 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. (*WIC 13300 (d)*)
- 3) Requires the contracts awarded by CDSS to fulfill each of the following and may be executed only with nonprofit legal services organizations that meet all of the following requirements:
 - a. Have at least three years of experience handling asylum, T-Visa, U-Visa, or special immigrant juvenile status cases and have represented at least 25 individuals in these matters;

- b. Have experience in representing individuals in removal proceedings and asylum applications;
 - c. Have conducted trainings on these issues for practitioners beyond their staff;
 - d. Have experience guiding and supervising the work of attorneys who themselves do not regularly participate in this area of the law but nevertheless work pro bono on handling asylum, T-Visa, U-Visa, or special immigrant juvenile status cases.
 - e. Are accredited by the Board of Immigration Appeals under the United States 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. (*WIC 13301 (a)*)
- 4) Provides immigration relief that relies on a state's interest in the welfare of children by providing for Special Immigrant Juvenile Status where a state determines that reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or similar basis found under state law and that it would not be in the child's best interest to return to their home country. (*8 USC 1101 (a)(27)(J)*)
- 5) Establishes that the care and custody of unaccompanied minors is the responsibility of the Office of Refugee Resettlement in the Department of Health and Human Services instead of the Department of Homeland Security. (*Homeland Security Act of 2002; P.L. 107-296, 462*)
- 6) Defines 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 of their 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 their best interest. (*8 USC 1101(a)(27)(J)*)

This Bill:

- 1) Provides that the state shall provide legal counsel to each unaccompanied undocumented minor in the physical custody of the federal Office of Refugee Resettlement and present in California or residing with a family member or other sponsor in California.
- 2) Provides that this right to counsel shall apply as follows:
- a. The right to counsel begins at the time an unaccompanied undocumented minor is issued a notice to appear and has been placed in immigration removal proceedings.
 - b. The right to counsel applies in state court proceedings for purposes of obtaining any order necessary for or relevant to immigration remedies, federal immigration proceedings, any related appearances or matters before the United States

Department of Homeland Security, and any appeals arising from those proceedings.

- c. The right to counsel applies unless the unaccompanied undocumented minor has retained counsel independently.
 - d. The right to counsel applies to a child who has been designated an unaccompanied undocumented minor at any time throughout the pendency of any of the proceedings.
- 3) Requires CDSS to contract to fulfill this obligation with either of the following:
- a. A qualified nonprofit legal services organization.
 - b. An office of public defender for the county, if the public defender meets all of the following requirements:
 - i. The office has an immigration unit or contracts with an immigration attorney with at least three years of experience and expertise in providing legal representation to clients in civil immigration matters before the United States Department of Homeland Security.
 - ii. The immigration unit or immigration attorney on contract supervises work completed pursuant to the contract to provide counsel for unaccompanied undocumented minors.
 - iii. The attorneys within the office performing work pursuant to the contract to provide counsel for unaccompanied undocumented minors receive at least two trainings of two hours each on matters relating to asylum, T-visas, U-visas, or special immigrant juvenile status.
- 4) Provides that an unaccompanied undocumented minor is any person who meets all of the following requirements:
- a. The person has no lawful immigration status in the United States.
 - b. The person has not attained 18 years of age.
 - c. The person has no parent or legal guardian in the United States, or no parent or legal guardian in the United States is available to provide care and physical custody.
- 5) Provides that CDSS shall require contractors pursuant to this section to maintain adequate legal malpractice insurance as necessary and to indemnify and hold the state harmless from any claims that arise from the legal services provided pursuant to this section.

FISCAL IMPACT

According to the Assembly Appropriations Committee analysis:

- 1) Annual, ongoing cost pressures (General Fund) to allocate funding to CDSS to provide legal representation to every qualifying minor. Actual costs will depend on the number of qualifying minors in the state each year, and, of those, the number who need legal representation provided by the state. In 2024, ORR released more than 10,800 minors from its custody into the care of sponsors in California. This committee was unable to determine the number of minors in ORR custody in the state. CDSS disbursed \$2.9 million in grants in fiscal year (FY) 2024-25 for legal services for unaccompanied undocumented minor clients. CDSS's grants are based on a flat fee per-service scale of \$7,000 per client. Assuming half of the minors released from ORR custody each year need representation provided by the state and assuming the same per-client cost, annual costs would be approximately \$37.8 million, plus the costs of providing representation to minors in ORR custody.
- 2) Workload costs (General Fund) to CDSS of an unknown but potentially significant amount to contract with legal services providers and public defender offices to fulfill the right to counsel created by this bill. CDSS notes it already has contracts with some legal services organizations that provide immigration counsel (as described below), but the department would incur new cost pressures to establish contracts with public defender offices. It is not clear whether CDSS's current contracts are sufficient to fulfill the right to counsel established by the bill; if not, the department may incur additional workload costs to find and contract with additional legal services providers.

The Governor's FY 2025-26 budget proposal includes \$75 million to fund immigration legal services. The author of this bill submitted a budget request seeking an additional \$60 million in FY 2025-26 for immigration legal services programs. The budget request is not specific to this bill but, if fulfilled, may help fund the requirements of this bill.

BACKGROUND AND DISCUSSION

Purpose of the Bill:

According to the author, "Unaccompanied immigrant children in the U.S. currently have no right to legal counsel in immigration court, leaving them vulnerable to deportation and unable to access to critical protections like Special Immigrant Juvenile Status (SIJS) and asylum. The legal processes for these protections are complex, and without an attorney, these children are at a severe disadvantage. In 2023, only 56% of unaccompanied children had legal representation, and the difference in outcomes is stark. A 2021 report revealed that 90% of unrepresented minors were ordered removed. Additionally, many children never even get the chance to present their case. In fiscal year 2023, 86% of removal orders were issued in absentia, often because children couldn't make it to court. Represented children, however, appeared in 95% of hearings. Recent actions by the federal administration, such as canceling a contract that provided legal services to 26,000 children and an ICE memo prioritizing unaccompanied children for detention, have heightened the need for children to have access to representation. California alone received over 10,800 unaccompanied minors in fiscal year 2024, underscoring the urgent need for a right to counsel. It is critical to provide legal representation to ensure these children have a fair chance at

justice. Access to counsel is not just a matter of legal fairness—it’s a matter of basic human rights.”

Unaccompanied Minors

Unaccompanied minors are defined as a child who has no lawful immigration status, is not yet 18 and has no parent or legal guardian in the US or has no parent or legal guardian in the US available to provide care and physical custody.¹ This is an exceptionally vulnerable population and efforts have been made to provide them legal services. Formerly known as the Unaccompanied Undocumented Minors Program, the Youth Legal Services program allows CDSS to provide grants to qualified nonprofit legal services organization to provide legal services to eligible Unaccompanied Undocumented Minors and other Immigrant Youth. The program is funded with an annual state budget allocation of \$2.9 million. Since state fiscal year 2022-23, CDSS has also allocated an additional \$1.3 million in funds, bringing the Youth Legal Services program funding level to \$4.2 million each year. Currently, CDSS is funding 23 nonprofit organizations to provide pro bono immigration legal services and deportation defense to 600 undocumented minors each year.

Prior to this administration, the federal government had contracted with nonprofit organizations to provide legal representation to these unaccompanied minors in federal immigration proceedings. A 2008 law passed by Congress required the federal government to provide legal counsel to unaccompanied minors. In February of this year, the federal government suspended existing contracts with nonprofit organizations providing these legal services, then, days later, restored the program. In March, the administration halted funding again. The National Immigrant Justice Center estimates this left approximately 26,000 children nationwide without legal services.

Additionally, in February ICE issued a memo directing ICE agents to conduct a nationwide search for unaccompanied minors for deportation purposes. The memo specifically indicated a focus on those children identified as a “flight risk” because of missing court appearances or those with non-blood-relative sponsors. Unaccompanied minors without attorneys often miss their court cases, likely because of their age and not having an attorney to guide them through the complex system. Given these changes at the federal level, it is even more important now to ensure these vulnerable minors have legal representation.

Related/Prior Legislation:

AB 120 (Committee on Budget, Chapter 43, Statutes of 2023) among other things, removes the requirement that contracts provide for legal services to unaccompanied minors on a fee-per-case basis and instead requires the CDSS to determine the funding method. Allows grants to be used to provide immigration benefits and authorizes the CDSS to approve a nonprofit legal service organization to receive a grant if it has at least three years of experience and has conducted trainings on immigration issues for persons beyond its staff.

AB 135 (Assembly Budget Committee, Chapter 85, Statutes of 2021) among other things, establishes the Enhanced Services for Asylees and Vulnerable Noncitizens program to provide

¹ 6 USC 279(g)(2)

for persons granted asylum or who are eligible to receive refugee cash assistance and services as victims of crime, authorizes CDSS to reallocate returned or declined funds among eligible counties and qualified nonprofit organizations for refugee social services programs, and repeals the July 1, 2022 sunset date for the rapid response program within CDSS.

AB 2642 (Levine, Chapter 103, Statutes of 2018) provides, in an effort to ensure that unaccompanied minors are able to apply for Special Immigrant Juvenile Status immigration relief, that a nonprofit charitable corporation not incorporated in this state may be appointed as the guardian of a minor if specified requirements are met, which include that (1) the nonprofit charitable corporation is licensed by this state to provide care for minors; (2) the nonprofit charitable corporation is contracted by the federal Department of Health and Human Services, Office of Refugee Resettlement to provide care and custody of the minor; and (3) the petition for guardianship is filed in connection with a petition to make the necessary findings regarding special immigrant juvenile status.

COMMENTS

This bill requires the state to provide legal counsel to unaccompanied undocumented minors and requires CDSS to contract with nonprofits legal services organizations and offices of the public defender to provide these legal services. In light of increases in immigration enforcement action and the inability for minors to successfully navigate a complex legal system on their own, this bill seems a commonsense approach to dealing with the current landscape.

PRIOR VOTES

Senate Judiciary Committee:	12 – 1
Assembly Floor:	63 - 8
Assembly Appropriations Committee:	11 - 2
Assembly Judiciary Committee:	9 - 2

POSITIONS

Support:

California Public Defenders Association
 California State Council of Service Employees International Union (SEIU California)
 Coalition to Abolish Slavery and Trafficking
 Democrats of Rossmoor
 First 5 California
 Soledad; City of

Oppose:

None received

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