

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 829 (Levine)  
Version: June 29, 2021  
Hearing Date: July 13, 2021  
Fiscal: Yes  
Urgency: No  
ME

**SUBJECT**

Foster children: immigration counsel and guardianship

**DIGEST**

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

**EXECUTIVE SUMMARY**

Helping unaccompanied minors to receive immigration relief has been a priority of the Legislature since 2014 (*See Comment 2, below*). In an effort to ensure that unaccompanied minors are able to apply for Special Immigrant Juvenile Status immigration relief, this bill extends the sunset, set to expire on December 31, 2021, on the provisions of law that provide that a nonprofit charitable corporation not incorporated in this state may be appointed as the guardian of a minor if specified requirements are met. Additionally, this bill requires a county to 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. The bill also requires tracking and reporting regarding undocumented minor and nonminor dependents in foster care, as specified, including whether they have been provided access to immigration legal services. This bill furthers the goal of helping unaccompanied minors to obtain the immigration relief that they are entitled to under the law, but that is impossible to obtain without the help of attorneys who are experts in immigration law.

This bill is sponsored by Children's Law Center of California (co-sponsor), Law Foundation of Silicon Valley (co-sponsor), and Legal Services for Children (co-sponsor). The bill passed out of the Senate Committee on Human Services with a 5 to 0 vote. There is no opposition to this measure.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) 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 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 his or her best interest. (8 U.S.C. Sec. 1101(a)(27)(J).)
- 2) Allows, under federal law, such person to obtain Special Immigrant Juvenile Status (SIJS) and, based on that, apply for a visa for lawful permanent residency. (8 U.S.C. Sec. 1153(b)(4).)
- 3) Provides that the superior court, including a juvenile, probate, or family court department or division of the superior court, has jurisdiction to make judicial determinations regarding the custody and care of juveniles within the meaning of the federal Immigration and Nationality Act, and requires the superior court to make an order containing the necessary findings regarding SIJS pursuant to federal law, if there is evidence to support those findings. (Code Civ. Proc. § 155.)
- 4) Authorizes, until January 1, 2022, a nonprofit charitable corporation that is not incorporated in this state to be appointed as a guardian of a minor in connection with a petition regarding special immigrant juvenile status, if the nonprofit charitable organization meets specified requirements including that it is licensed by this state to provide care for minors and is contracted by a specific federal office to provide care and custody for the minor. (Prob. Code § 2104.1.)
- 5) 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. (Welf. & Inst. Code § 202.)
- 6) 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. (Welf. & Inst. Code § *et seq.*)
- 7) 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. (Welf. & Inst. Code §§241.1, 303, 366.3, 388, 391, 11400, 11402, 11403.)
- 8) 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. (Welf. & Inst. Code §11400(v).)

- 9) Requires the court, if a child or nonminor dependent is not represented by counsel in a juvenile dependency proceeding, to appoint counsel for the child or nonminor dependent, unless the court finds that the child or nonminor dependent 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. (Welf. & Inst. Code § 317(c), (e).)
- 10) 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. (Welf. & Inst. Code §§ 13300; 13301.)

This bill:

- 1) Makes several findings and declarations, including that:
  - almost all undocumented children in foster care qualify for immigration relief, but that relief is difficult to obtain without an attorney, especially in the current political climate;
  - children who emancipate from foster care without submitting an application for special juvenile immigrant status are unable to apply later and will subsequently be unable to work and to successfully transition to adulthood;
  - Section 391 of the Welfare and Institutions Code requires that, before terminating dependency jurisdiction over a nonminor, the county welfare department ensure that, when applicable, a nonminor is provided with proof of citizenship or legal residency; and
  - Subdivision (e) of Section 317 of the Welfare and Institutions Code requires a minor's counsel to inform the court of other legal needs outside of the juvenile court proceedings.
- 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.
- 3) 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.

- 4) 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.
- 5) Provides that this access may be provided by the child welfare agency through outside legal service providers.
- 6) Requires that the California State Department of Social Services (DSS), by January 1, 2023, shall develop and implement a process to track, and for counties to report the number of undocumented minor and nonminor dependents in foster care under the jurisdiction of the juvenile court and whether the undocumented minors and nonminor dependents in foster care have been provided access to immigration legal services.
- 7) Provides that a county, by April 1, 2023, and annually thereafter, shall report the deidentified data to the DSS pursuant to the tracking process described in paragraph (5) above.
- 8) Provides that DSS, by July 1, 2023, and by July 1 of each year thereafter, shall submit a report to the Legislature that includes the information submitted by counties to the department.
- 9) Provides that by June 1, 2022, a county shall report to DSS its internal process for providing undocumented minors and nonminor dependents in foster care under the jurisdiction of the juvenile court access to immigration legal services.
- 10) Provides that if the county system is inadequate to ensure that all undocumented minors and nonminor dependents are provided access to immigration legal services, the county shall specify in this report the additional resources it requires to fulfill this need.
- 11) Provides that when the placing agency becomes aware that a dependent child or a nonminor dependent is an undocumented immigrant, the placing agency shall notify the dependent child's or nonminor dependent's attorney that the dependent child or nonminor dependent is an undocumented immigrant.
- 12) Provides that electronic or telephonic notice shall be provided to the attorney within five business days of learning of the dependent child's or nonminor dependent's immigration status.
- 13) Provides that to the extent that this act has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase.

- 14) Indefinitely authorizes a nonprofit charitable corporation that is not incorporated in this state to be appointed as a guardian of a minor in connection with a petition regarding special immigrant juvenile status, if the nonprofit charitable organization meets specified requirements including that it is licensed by this state to provide care for minors and is contracted by a specific federal office to provide care and custody for the minor.
- 15) Makes nonsubstantive and conforming changes.

### COMMENTS

#### 1. Stated need for 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. Currently, almost all undocumented children in foster care qualify for immigration relief, however; this relief is difficult to obtain without legal assistance.

In addition to existing obstacles, counties currently operate without a standard system in place to track the number of undocumented minors and non-minor dependents in their jurisdiction that require access to immigration services. AB 829 will require counties to report current procedures in place to provide undocumented minors and non-minor dependents with immigration legal services to the Department of Social Services, as well as report to the state whether any gaps in resources exists within these systems. Collecting this information will help the State understand whether more resources are needed at the count-level to appropriately serve this population.

This bill will require counties to make their best efforts to provide an undocumented minor or non-minor dependent in foster care under the jurisdiction of the juvenile court with access to immigration legal services to ensure undocumented youth in California's foster care system are provided with the essential immigration legal services necessary to seek lawful residency in the United States.

#### 2. Helping unaccompanied minors receive immigration relief has been a priority of the Legislature since 2014

Special Immigrant Juvenile Status (SIJS), found in the Federal Immigration and Nationality Act, is a statutory tool enacted over two decades ago to benefit immigrant

children. SIJS involves both federal and state law. The federal statute and regulations provide the framework, and the state courts provide the details for each individual situation. The Los Angeles County Bar Association describes the interplay between state and federal law in a 2012 article as follows:

First, a juvenile court must establish the child's eligibility for immigration relief. Without the court's findings, the child cannot apply for SIJS. A "juvenile court," for SIJS purposes, is "a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles." This broad definition encompasses many California courts--those that handle dependency and delinquency proceedings as well as those that hear guardianships, adoptions, and even family law cases. What matters is the jurisdiction of California courts, not the labels they use for themselves.

Second, the juvenile court must have either 1) declared the child dependent on the court, 2) legally committed the child to, or placed the child under the custody of, an agency or department of a state, or 3) legally committed the child to, or placed the child under the custody of, an individual or entity appointed by the court. Juvenile court dependents ... meet this requirement. So too do ... wards when the court vests their "care, custody and control" in the probation department. A child whose custody is placed with a guardian, including an institutional guardian, or with a prospective adoptive parent also meets this requirement. (Jackson, *Special Status Seekers: Through the underused SIJS process, immigrant juveniles may obtain legal status*, 34 (Feb. 2014) Los Angeles Lawyer 20, 22.)

The court must additionally determine that reunification with one or more of the child's parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law. "Under California law, children have met this requirement when, for example, their parents are deceased; their parents' identities are unknown; their parents have sexually, physically, or emotionally harmed them; or their parents have not provided appropriate care, support, or protection. By definition, SIJS-eligible children have suffered the lack of a stable and safe two-parent household." (*Id.*) Additionally, the court must find that it is not in the child's best interest to return to the child's or his or her parent's country of nationality.

In 2014, through SB 873 (Budget and Fiscal Review, Ch. 685, Stats. 2014), the Legislature clarified that superior courts can make the findings necessary for a child to be eligible for SIJS. That law states that the superior court (including a juvenile, probate, or family court) has jurisdiction to make judicial determinations regarding the custody and care of juveniles within the meaning of the federal Immigration and Nationality Act, and requires the court to make an order containing the necessary findings for SIJS, if there is evidence to support them. (Code Civ. Proc. Sec. 155.) In 2015, AB 900 (Levine, Ch. 694, Stats. 2015) authorized, with the consent of the proposed ward, a probate court to establish or extend a guardianship of the person for an unmarried individual, who is at

least 18 years of age, but not yet 21, in connection with a petition to make necessary findings for the youth to pursue Special Immigrant Juvenile Status immigration relief. In 2016, AB 1603 (Committee on Budget and Fiscal Review, Ch. 25, Stats. 2016) made statutory changes to clarify the intent of SB 873 (Committee on Budget and Fiscal Review, Ch. 685, Stats. 2014) and AB 900 (Levine, Ch. 694, Stats. 2015), relating to the Unaccompanied Undocumented Minors program, administered by the Department of Social Services, which provides legal services funding for unaccompanied undocumented minors. Specifically, these changes clarified that special immigrant juvenile status (SIJS) findings can be made at any point in the court proceedings; prerequisites for SIJS findings are the same across superior court divisions; and perceived motivations of the child/juvenile in seeking classification as a special immigrant juvenile shall not be included or referred in the findings under this section.

In 2018, AB 2090 (Gonzalez Fletcher, Ch. 209, Stats. 2018) clarified, in an effort to ensure that all eligible youth in California are able, when appropriate, to obtain state court findings so that they can apply for Special Immigrant Juvenile Status immigration relief, that, for the limited purpose of obtaining the necessary state court findings, a probate court may appoint a parent as guardian. Additionally in 2018, AB 2642 (Levine, Ch. 103, Stats. 2018) provided that a nonprofit charitable corporation not incorporated in this state may be appointed as the guardian of a minor if specified requirements are met. AB 2642 was brought in an effort to ensure that unaccompanied minors are able to apply for Special Immigrant Juvenile Status immigration relief. The provisions of AB 2642 are set to sunset on December 31, 2021. This bill removes the sunset.

This bill continues the Legislature's tradition of helping unaccompanied minors to obtain immigration relief by requiring counties to make their best efforts to provide undocumented minors and nonminor dependents in foster care with access to immigration legal services and requiring reporting of information regarding these children and youth so that the Legislature can conduct appropriate oversight with the ultimate goal of ensuring children and youth have access to competent attorneys to obtain the immigration relief they are entitled to.

### **SUPPORT**

Alliance for Children's Rights  
Children's Law Center of California (co-sponsor)  
Law Foundation of Silicon Valley (co-sponsor)  
Legal Services for Children (co-sponsor)  
American Academy of Pediatrics, California  
Alliance for Children's Rights  
California Court Appointed Special Advocate Association  
CaliforniaHealth+ Advocates  
Court Appointed Special Advocate Association of Los Angeles  
Children NOW

County of San Diego  
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**

None known

### **RELATED LEGISLATION**

#### **Pending Legislation:**

AB 1140 (R. Rivas, 2021) provides that specified duties of the California State Department of Social Services and the Office of the State Foster Care Ombudsperson include duties to children who are in state-licensed foster facilities and homes in the custody of the Office of Refugee Resettlement of the federal Department of Health and Human Services. That bill will be heard in this Committee on the same day as this bill.

#### **Prior Legislation:**

AB 2642 (Levine, Ch. 103, Stats. 2018) in an effort to ensure that unaccompanied minors are able to apply for Special Immigrant Juvenile Status immigration relief, this bill provided that a nonprofit charitable corporation not incorporated in this state may be appointed as the guardian of a minor if specified requirements are met.

AB 2090 (Gonzalez Fletcher, Ch. 209, Stats. 2018) clarified, in an effort to ensure that all eligible youth in California are able, when appropriate, to obtain state court findings so that they can apply for Special Immigrant Juvenile Status immigration relief, that, for the limited purpose of obtaining the necessary state court findings, a probate court may appoint a parent as guardian.

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SB 873 (Committee on Budget and Fiscal Review, Ch. 685, Stats. 2014) enacted Code of Civil Procedure Section to strengthen protections for immigrant children by making it clear that all California courts have jurisdiction to make SIJS findings.

**PRIOR VOTES:**

Senate Human Services Committee (Ayes 5, Noes 0)

Assembly Floor (Ayes 68, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Judiciary Committee (Ayes 9, Noes 0)

Assembly Human Services Committee (Ayes 7, Noes 0)

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