

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 373 (Blanca Rubio)
Version: March 11, 2025
Hearing Date: June 17, 2025
Fiscal: No
Urgency: No
AWM

SUBJECT

Dependency proceedings: counsel

DIGEST

This bill requires counsel appointed to represent a nonminor dependent (NMD) in a dependency proceeding to represent the wishes of the NMD, without exception.

EXECUTIVE SUMMARY

Current law permits an NMD to remain in extended foster care until they reach 21 years of age. As a legal adult, an NMD generally retains the legal authority to make their own decisions, except where specified. One such exception arises with respect to the NMD's court-appointed counsel, which must be provided unless the court specifically finds that counsel would not benefit the NMD. While attorneys are generally required to represent their client's wishes, an NMD's attorney is required to represent the NMD's wishes unless the attorney determines that advocating for those wishes conflicts with the protection or safety of the NMD.

This bill eliminates the provisions permitting an NMD's counsel to override their client's wishes on the basis of the NMD's protection or safety, thereby bringing representation of an NMD in line with the representation of all other competent clients. The NMD's social worker and the attorney representing the county in the NMD's case will still be able to argue against the NMD's wishes if they believe the NMD's protection or safety are implicated, giving the court the ability to decide the issue. The intent of the bill is to prevent NMDs' attorneys from substituting their judgment for the NMD's own preferences regarding their lives.

This bill is sponsored by California Youth Connection and the Children's Law Center and is supported by Children Now and the Family Law Section Executive Committee of the California Lawyers Association (FLEXCOM). The Committee has not received

timely opposition to this bill. If the Committee passes this bill, it will then be heard by the Senate Human Services Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the juvenile court, which has jurisdiction over minors who are suffering or at substantial risk of suffering harm or abuse and may adjudge the minor to be a dependent of the court. (Welf. & Inst. Code, § 300.)
- 2) Provides that the purpose of the juvenile court dependency system is the maximum safety and protection for children who are currently being abused, neglected, or exploited. Provides that the focus is on the preservation of the family, as well as the safety, protection, and physical and emotional well-being of the child. (Welf. & Inst. Code, § 300.2.)
- 3) Provides that the juvenile court has jurisdiction over:
 - a) A child who is subject to abuse or neglect. (Welf. & Inst. Code, § 300.)
 - b) A child, when that child has committed acts that trigger delinquency jurisdiction rendering the child a ward. (Welf. & Inst. Code, §§ 601, 602.)
 - c) Any NMD; an NMD under the jurisdiction of the juvenile court retains their legal decision-making authority as an adult, except as specified. (Welf. & Inst. Code, § 303.)
- 4) Defines “NMD” as a current foster youth or a nonminor under the transition jurisdiction of the court who: is between 18 and 21 years old; turned 18 years old while under an order of foster care placement; is in foster care under the responsibility of the county welfare department, county probation department, or Indian Tribe; and is participating in a transitional independent living plan, as specified. (Welf. & Inst. Code, § 11400(v).)
- 5) Requires the court to appoint counsel for a minor or NMD in a dependency proceeding if they are not already represented by counsel, unless the court specifically finds that the minor or NMD would not benefit from the appointment of counsel. (Welf. & Inst. Code, § 317(c)(1).)
- 6) Provides that a primary responsibility of counsel appointed to represent a minor or NMD shall be to advocate for the protection, safety, and physical and emotional well-being of the minor or NMD. (Welf. & Inst. Code, § 317.(c)(2).)
- 7) Provides that court-appointed counsel for a child or NMD is charged with the following:

- a) For a minor, court-appointed counsel is charged in general with the representation of the minor's interests.
 - b) For an NMD, court-appointed counsel is charged with representing the wishes of the NMD except when advocating for those wishes conflicts with the protection or safety of the NMD. (Welf & Inst. Code, § 317(e)(1).)
- 8) Provides that, if a court finds that an NMD is not competent to direct counsel, the court shall appoint a guardian ad litem for the NMD. (Welf. & Inst. Code, § 317.(e)(1).)

This bill:

- 1) Removes the provision allowing court-appointed counsel for an NMD to disregard the NMD's wishes if the counsel determines that the wishes conflict with the protection or safety of the NMD.
- 2) Makes nonsubstantive technical and conforming changes.

COMMENTS

1. Author's comment

According to the author:

Assembly Bill 373 seeks to amend California Welfare and Institutions Code ("WIC") Section 317(e) to clarify that when counsel is appointed to represent a nonminor dependent, the counsel's primary responsibility is to represent the wishes of the nonminor dependent, rather than acting solely as an advocate for their best interests.

2. Overview of the dependency system

The overarching goal of dependency proceedings is to safeguard the welfare of California's children.¹ Welfare and Institutions Code section 300 sets forth the circumstances that can bring a child within the jurisdiction of the juvenile dependency court. " 'Although the harm or risk of harm to the child [for jurisdictional purposes] must generally be the result of an act, omission or inability of one of the parents or guardians, the central focus of dependency jurisdiction is clearly on the child rather than the parent.' "²

When a child is found to be under the jurisdiction of the juvenile court, the child is deemed a dependent of that court and the court may begin proceedings to remove the

¹ *In re Josiah Z.* (2005) 36 Cal.4th 664, 673.

² *In re R.T.* (2017) 3 Cal.5th 622, 626.

child from the custody of their parent(s); if, after a series of hearings, a parent is found to be unfit, the court can terminate the parent's parental rights.³ The overarching inquiry is whether the child would suffer, or is likely to suffer, harm if they remain with their parent.

3. Overview of extended foster care and NMDs

In October 2008, the federal government enacted the Fostering Connections to Success and Increasing Adoptions Act,⁴ which, among other things, offered additional funding to states that opted to extend foster care services to youths between 18 and 21 years of age. Two years later, the Legislature enacted the California Fostering Connections to Success Act (the Act),⁵ which authorized the juvenile courts to exercise jurisdiction over, and extend foster care benefits to, persons between 18 to 21 years of age who are eligible for specified public assistance and for whom one or more of the following conditions exist:

- The nonminor is working toward their high school education or an equivalent credential;
- The nonminor is enrolled in a postsecondary institution or vocational education program;
- The nonminor is participating in a program or activity designed to promote or remove barriers to employment;
- The nonminor is employed for at least 80 hours per month; and/or,
- The nonminor is incapable of doing any of the activities described above, due to a medical condition, and that incapability is supported by regularly updated information in the case plan of the nonminor.⁶

In the years after the Act's passage, the Legislature passed several additional measures to refine, and close gaps in, the laws governing foster care for youths between 18 and 21 years of age.⁷ These dependents are known as "nonminor dependents," or NMDs,⁸ and the system of supports provided to them is known as "extended foster care." As of January 1, 2025, there were 38,894 minors and NMDs in foster care in California, 6,804 of whom were NMDs.⁹

³ See *id.*, §§ 360, 361.3, 366.26.

⁴ P.L. 110-351 (2008).

⁵ AB 12 (Beall, Ch. 559, Stats. 2010).

⁶ Welf. & Inst. Code § 11403.

⁷ See AB 212 (Beall, Ch. 459, Stats. 2011), AB 1712 (Beall, Ch. 846, Stats. 2012), AB 787 (Stone, Ch. 487, Stats. 2013), AB 2454 (Quirk-Silva, Ch. 769, Stats. 2014), AB 2337 (Gipson, Ch. 539, Stats. 2018), AB 748 (Gipson, Ch. 682, Stats. 2019).

⁸ See Welf. & Inst. Code, § 11400(v).

⁹ California Child Welfare Indicators Project, University of California at Berkeley, Report: Children in Foster Care, CWS/CMS 2024 Quarter 4 Extract (Jun. 12, 2025), *available at* <https://ccwip.berkeley.edu/childwelfare/reports/PIT/MTSG/r/ab636/1> (link current as of June 12, 2025).

4. The right to counsel in dependency proceedings

If a minor or an NMD does not have counsel in a dependency proceeding, the court must appoint counsel for them.¹⁰ A primary responsibility of court-appointed counsel is “to advocate for the protection, safety, and physical and emotional well-being of the child or the [NMD].”¹¹ Court-appointed counsel for a child is tasked with generally representing the child’s interests, without specifying when and how counsel may make arguments contrary to the child’s wishes.¹² Court-appointed counsel for an NMD, however, “is charged with representing the wishes of the nonminor dependent except when advocating for those wishes conflicts with the protection or safety of the [NMD].”¹³ This provision permitting an NMD’s counsel to override the NMD’s wishes applies to NMDs who are legally capable of making their own decisions – if the court determines that an NMD is not competent to direct counsel, the court is required to appoint a guardian ad litem for the NMD.¹⁴ As a practical matter, this provision appears to give NMD’s counsel substantial leeway in declining to represent the NMD’s wishes, because the terms “protection” and “safety” are both broad and vague.

Under the California Rules of Professional Conduct, an attorney “shall abide by a client’s decisions concerning the objectives of representation” unless the client seeks advice on the commission of a criminal or fraudulent act.¹⁵ The provision permitting an NMD’s attorney to contradict their client’s wishes, therefore, represents a significant departure from the standard attorney-client relationship, as explained by FLEXCOM:

The exception in the existing statute is contrary to the nature of the relationship attorneys necessarily have with an adult client. Namely, fundamental to an adult’s exercise of their rights (and an attorney’s duty to advocate for those rights and loyalty to the client) is effectuating their stated wishes, within the applicable legal context. In other legal contexts, nonminor dependents are entitled to the same legal rights and protections provided to other adults. Allowing court-appointed counsel to advocate against their adult client’s stated wishes effectively removes a right that nonminor dependents have in other legal proceedings as adults. The social worker can advocate for an outcome that differs from the nonminor dependent’s stated wishes and the court may make an order that differs from those stated wishes (if, for example, the stated wishes conflict with the protection or safety of the nonminor dependent). FLEXCOM believes, however, that court-appointed counsel should advocate for the stated wishes of their nonminor dependent client, just as they would do for other adult clients, without substituting their judgment for the wishes of their client.

¹⁰ Welf. & Inst. Code, § 317(c).

¹¹ *Id.* at § 317(c)(2).

¹² *Id.* at § 317(e)(1).

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Rules Prof. Conduct, rules 1.2 & 1.21.

5. This bill removes the provision permitting an NMD's counsel to act contrary to their wishes

This bill modifies the provisions relating to an NMD's court-appointed counsel to require that the NMD's counsel represent the NMD's wishes, consistent with an attorney's obligation to any other competent adult client. This bill is intended to prevent court-appointed counsel from advocating for their own opinion about what is best for the NMD, rather than respecting the NMD's judgments about their own life. As the bill's sponsors and supporters note, the NMD's social worker and counsel representing the county will still be in a position to advance positions contrary to the NMD's wishes if they believe that the NMD's wishes are contrary to the NMD's protection or safety, and the juvenile court will still be able to determine whether to grant an NMD's requests.

This bill is consistent with the general rule that NMDs are legal adults who generally retain their own decisionmaking authority.¹⁶ The bill is also consistent with the rules governing attorney representation.¹⁷

6. Arguments in support

According to the Children's Law Center of California:

Currently, existing law requires appointed counsel to represent the best interests of children and nonminor dependents in dependency proceedings. However, this standard is often inappropriately applied to nonminor dependents, who, as legal adults, deserve the right to direct their own representation. The current framework can result in legal counsel overriding the wishes of nonminor dependents (legal adults) in favor of what an attorney perceives to be in their best interest, effectively limiting the nonminor dependents' decision-making power.

AB 373 directly addresses this issue by:

- **Clarifying the role of counsel** by requiring that appointed attorneys for nonminor dependents advocate for their expressed wishes rather than substituting their judgment.
- **Upholding nonminor autonomy** by affirming their right to actively participate in legal decisions regarding housing, education, and employment.
- **Distinguishing minors from nonminor dependents** by ensuring counsel can continue to advocate for a minor's best interests while nonminor dependents receive legal representation aligned with their stated interests.

¹⁶ Welf. & Inst. Code, § 303.

¹⁷ Rules Prof. Conduct, rules 1.2 & 1.21.

CLC urges the Committee to support AB 373 as it strengthens the rights of nonminor dependents and ensures that counsel is given the mandate to appropriately advocate for them, recognizing their autonomy and needs. This bill represents a crucial step forward in making California's juvenile dependency system more responsive, just, and respectful of nonminor dependents' voices.

SUPPORT

California Youth Coalition (co-sponsor)
Children's Law Center of California (co-sponsor)
Children Now
FLEXCOM

OPPOSITION

None received

RELATED LEGISLATION

Pending legislation: None known.

Prior legislation: AB 3049 (Bryan, 2024) would have added requirements for court-appointed minor and NMD counsel and the courts relating to the minor's or NMD's rights in dependency proceedings. AB 3049 died in the Senate Appropriations Committee.

PRIOR VOTES:

Assembly Floor (Ayes 64, Noes 0)
Assembly Human Services Committee (Ayes 6, Noes 0)
Assembly Judiciary Committee (Ayes 9, Noes 0)
