

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

AB 640 (Cooley)
Version: June 16, 2021
Hearing Date: July 6, 2021
Fiscal: Yes
Urgency: No
JT

SUBJECT

Extended foster care: eligibility redetermination

DIGEST

This bill, with respect to foster youth who were ineligible for federal foster care funds before they turned 18, creates a process that triggers a new eligibility determination if they receive extended foster care after turning 18.

EXECUTIVE SUMMARY

To help prepare foster youths who are aging out of the system to transition to self-sufficiency, California extends foster care benefits to former foster care youth between the ages of 18 and 21, also known as nonminor dependents. Under the rules governing federal foster care funding, financial support for a youth in foster care is determined by the income level of the household from which the youth was removed at the time they entered foster care, rather than by the current needs of the youth. If, upon turning 18, the youth exits foster care but subsequently opts to re-enter the system before their 21st birthday, they are subject to a new eligibility determination based solely on the youth's financial circumstances. However, if the 18-year-old foster youth opts to continue foster care without interruption, there is no mechanism for re-determining their eligibility.

This bill seeks to put all nonminor dependents on equal footing with respect to federal funding eligibility. Specifically, the bill would establish a means by which dependency jurisdiction can be terminated and automatically reestablished, without the interruption of services or the need to prepare new documentation, in order to trigger a re-determination of eligibility for federal foster care funding. The bill is sponsored by the County Welfare Directors Association of California, and is supported by the Alliance for Children's Rights, the California State Association of Counties, the County of Santa Clara, and the National Association of Social Workers, California Chapter. There is no known opposition. The Senate Human Services Committee passed the bill by a vote of 5-0. An amendment is described on page 6.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes, under Title IV-E of the federal Social Security Act, a funding program to, among other things, enable each State to provide foster care and transitional independent living programs for children who meet certain criteria, as specified. (42 U.S.C. § 670 et seq.)
- 2) Provides that a child may become a dependent of the juvenile court and be removed from the control of their parent or guardian on the basis of abuse or neglect. (Welf. & Inst. Code § 300.)¹
- 3) Authorizes the court to retain jurisdiction over a dependent who becomes a nonminor between the ages of 18 and 21 (§ 303(a)), or, if the court terminates jurisdiction over a nonminor, the nonminor may petition the court for reinstatement of jurisdiction (§§ 388(e), 388.1). Establishes certain eligibility criteria for nonminor dependents. (§§ 11400, 11403(a), (b).)
- 4) Authorizes the court to terminate dependency jurisdiction over a nonminor if the court finds that the nonminor does not wish to remain subject to the dependency jurisdiction, or is not participating in a reasonable and appropriate transitional independent living case plan. (§ 391(e)(1).)

This bill:

- 1) With respect to nonminors who were initially ineligible for AFDC-FC funding, authorizes the county child welfare, probation, or tribal placing agency, on behalf and with the consent of, the nonminor to petition the court to dismiss and immediately resume its dependency jurisdiction (or transition jurisdiction in the case of wards), in order to establish the nonminor dependent's eligibility for federal financial participation.
- 2) Requires the agency to ensure that the nonminor dependent does not experience a break in services or supports as a result of this process. Provides that the nonminor dependent cannot be required to prepare new versions of the necessary documentation for obtaining nonminor dependent status.
- 3) Requires the Judicial Council, by September 1, 2022, to develop rules and forms necessary to implement this process.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

- 4) Requires the Director of Social Services to seek any federal approvals necessary to implement these provisions by July 1, 2022.
- 5) Makes other related and conforming changes.
- 6) Includes chaptering out amendments to avoid a conflict with AB 592 (Friedman, 2021).

COMMENTS

1. Author's statement

The author writes:

As of October 2020, there were 60,045 children in our child welfare system. Of those children, 8,256 were aged 18-21 in Extended Foster Care and 6,079 were aged 16-17 and soon to be “aging out” of traditional foster care to potentially enter Extended Foster Care in the next one-to-two years. Although the majority of children in foster care are under 15 years of age, our older foster youth require more resources and supports as they transition to adulthood, including housing, mental health, substance abuse, and job training.

When Extended Foster Care was established as an option through the federal Fostering Connections to Success Act it provided a 50% match from the federal government for KinGAP with the intent to move the money freed up by the federal match to support the EFC program. But the savings anticipated from the program ended up being smaller than estimated due to a much higher opt-in rate of foster youth moving into EFC. To complicate matters further there has been disagreement between the state and counties post-2011 realignment over what costs should be borne in EFC by the state.

AB 640 allows counties to re-establish a foster youth's federal eligibility when they enter EFC. Since foster youth at this transition age have little to no resources under their own names, most will meet the federal criteria for full EFC funding. This will free up county EFC to use for additional services for these transition age youth.

2. Extended foster care

The transition to independent living can be challenging for any young adult. Foster youth – already coping with the trauma of abuse or neglect, separation from family and friends, and, often, the disruption of moving through a series of placements, homes,

and schools – are especially likely to struggle during this phase. Of California’s roughly 60,000 foster youths, about 4,000 emancipate from the system each year, by far the largest number of any state in the U.S.² The immediate outcomes for these young adults are sobering. Studies have shown that former foster youth, when compared to other young adults, are far less likely to complete high school, attend college,³ or be employed.⁴ They are also at a much higher risk of experiencing mental health and substance abuse disorders,⁵ arrest and incarceration,⁶ and homelessness, with one in four reporting being unsheltered within the last two years.⁷

The Legislature has made it a priority in recent years to protect this vulnerable population, both by extending the availability of foster care to nonminors between the ages of 18 and 21 and by seeking to provide those aging out of foster care with better support to ease them into independence. Following the passage of the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. 110-351), which enabled states to access federal funds to implement a number of policy changes, including extending foster care benefits until age 21, California enacted the California Fostering Connections to Success Act (AB 12 (Beall) Ch. 559, Stats. 2010). AB 12 gave dependents the right to continue receiving foster care support after reaching the age of 18. The nonminor must be in school, job training, or working, unless they are incapable. (§ 11403(b).) They must also sign an agreement to remain in foster care, reside in an eligible placement, and agree to work with the social worker on their transitional living independent case plan. (§§ 303(a), 11400, 11403(a), (b).) Additionally, if the youth exits foster care, AB 12 gives the youth the right to reenter until they reach the age of 21, subject to the same conditions. (§§ 388(e), 388.1.)

² See *Just the Facts: Foster Care in California* (March 2010) Public Policy Institute of California https://www.ppic.org/content/pubs/jtf/JTF_FosterCareJTF.pdf (as of June 6, 2021); *Program Strategy for Foster Youth*, Conrad N. Hilton Foundation, p. 2, available at https://www.hiltonfoundation.org/wp-content/uploads/2019/10/Foster_Youth_Strategy_Paper-3.pdf (as of June 6, 2021).

³ Frerer et al. *At Greater Risk: California Foster Youth and the Path from High School to College* (2013) Stuart Foundation, p. 1, available at <https://stuartfoundation.org/wp-content/uploads/2016/04/at-greater-risk-california-foster-youth-and-the-path-from-high-school-to-college.pdf> (as of June 6, 2021).

⁴ Nikolas Bagley, *The Economic Well-Being of Youth Transitioning From Foster Care* (Dec. 4, 2017) <https://youthtoday.org/2017/12/the-economic-well-being-of-youth-transitioning-from-foster-care/> (as of June 6, 2021).

⁵ Havlicek et al. *Mental Health and Substance Use Disorders among Foster Youth Transitioning to Adulthood: Past Research and Future Directions* (2013) 35 Child Youth Serv. Rev. 194.

⁶ Sara McCarthy and Mark Gladstone, *What percentage of the state’s polled prison inmates were once foster care children?* (Dec. 2011) CA Senate Office of Research, available at https://sor.senate.ca.gov/sites/sor.senate.ca.gov/files/Foster_Care_PDF_12-8-11.pdf (as of June 6, 2021); Ashley Marie Yamat, *The Foster-Care-to-Prison Pipeline* (2020) 17 Justice Policy Journal 2, at p. 1, available at http://www.cjcj.org/uploads/cjcj/documents/the_foster_care_to_prison_pipeline.pdf (as of June 6, 2021).

⁷ Courtney et al, *Findings from the California Youth Transition to Adulthood Study (CalYOUTH) Conditions of Youth at Age 23* (2020) Chaplin Hall, University of Chicago, p. 151, available at https://www.chapinhall.org/wp-content/uploads/CY_YT_RE1020.pdf (as of June 6, 2021).

Extended foster care provides youth with the services and support to experience independent living in supervised living environments, and enables the youth to obtain educational and employment training to better prepare them for the transition to adulthood. Participation, which is voluntary, has been higher than stakeholders initially expected, with over 8,000 nonminor dependents currently receiving care.⁸

3. Seeks to unlock federal funding for nonminor dependents

Various funding streams are available to provide for the care of foster youths. The amount of funding depends on the caregiver and the needs of the youth. Under Title IV-E of the Social Security Act, federal law reimburses a portion of a State's costs to provide care for children who have been removed from their home due to maltreatment. Federal foster care funds are known as Aid to Families of Dependent Children-Foster Care (AFDC-FC). To qualify, a juvenile court must find in the initial hearing that (1) continuance in the home would be contrary to the child's welfare, (2) placement and care is overseen by a designated public agency, and (3) reasonable efforts have been made to prevent or eliminate the need for removal. (42 U.S.C. §§ 671, 672.) Nonminor dependents are eligible to directly receive AFDC-FC support until they reach age 21. (42 U.S.C. § 675(8).) Additionally, AFDC-FC reimburses administrative and training expenses necessary to support foster youths. (42 U.S.C. §§ 672, 674.)

However, federal financial support for a youth in foster care is determined by the income level of the household from which the youth was removed at the time they entered foster care, rather than by the current needs of the youth. (42 U.S.C. § 672(a).) This leads to disparate outcomes for similarly situated individuals. If, upon turning 18, the youth exits foster care but subsequently opts to re-enter the system before their 21st birthday, they are subject to a new eligibility determination based solely on the youth's eligibility. On the other hand, if the 18-year-old foster youth opts to continue foster care without interruption, there is no mechanism for re-determining their eligibility.

This bill seeks to put all nonminor dependents on equal footing with respect to federal funding eligibility. The bill, with respect to nonminors who were initially ineligible for AFDC-FC funding, authorizes the responsible agency, on behalf and with the consent of, the nonminor to petition the court to dismiss and immediately resume its dependency jurisdiction (or transition jurisdiction in the case of wards), in order to establish the nonminor dependent's eligibility for federal financial participation. The bill requires the agency to ensure that the nonminor dependent does not experience a break in services or supports as a result of this process. The bill also provides that the nonminor dependent cannot be required to prepare new versions of the necessary documentation for obtaining nonminor dependent status. To ensure this process is appropriately implemented, the bill requires the Judicial Council to develop necessary

⁸ *California Juvenile Dependency Practice* (2021) Continuing Education of the Bar – California, § 1.6, p. 12.

rules and forms. The bill also requires the Director of Social Services to seek any federal approvals necessary to implement these provisions.

The bill expressly excludes from this process undocumented nonminor dependents. The intent behind this provision is to avoid jeopardizing the status of a nonminor dependent who is in the process of obtaining special immigrant juvenile status. To clarify the provision, the author has agreed to the following amendment:

Amendment⁹

(7) A county child welfare, probation, or tribal placing agency shall not file a petition described in paragraph (1) for ~~an undocumented~~ a nonminor dependent *if they are categorically ineligible for federal AFDC-FC benefits.*

4. Support

The County Welfare Directors Association of California writes:

The federal Fostering Connections to Success Act of 2008 gave the states the option of extending foster care to age 21. In California, the EFC Program began implementation on January 1, 2012, and allowed foster youth aged 18 to remain in care, without a new foster care eligibility determination, so long as that youth agreed to meet specified participation requirements. The original legislation included a cap on county contributions, after which the state General Fund would cover all non-federal costs. Since 2011 Realignment, however, the counties and the state have been in disagreement as to whether the state's obligation to fund program costs exceeding the county contribution cap remains in effect. Additionally, costs have been significantly greater over time than originally anticipated due to higher participation rates among foster youth than originally estimated. This has led to a considerable funding gap that counties continue to shoulder.

Under federal guidance, states are permitted to re-determine eligibility for Title IV-E at the time a foster youth enters the EFC Program. Under this process, it is more likely that an NMD will meet the Title IV-E eligibility because only the NMD's income and resources are considered for eligibility. However, California's program is not designed to take advantage of this policy.

⁹ The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel as well as the addition of co-authors.

AB 640 would correct that oversight and enable counties to determine eligibility at the time a youth enters EFC, without any disruption to their services or support funding. It is estimated that net new federal funding could be approximately \$28 million to counties. Since foster youth at this transition age have little to no resources under their own names, most will likely meet federal criteria for full EFC funding. These new federal resources will free up county funding that can be used for additional services in the CWS system.

SUPPORT

County Welfare Directors Association of California (sponsor)
Alliance for Children's Rights
California State Association of Counties
County of Santa Clara
National Association of Social Workers, California Chapter
Rural County Representatives of California
San Francisco Human Services Agency
Urban Counties of California

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

AB 546 (Maienschein, 2021), with respect to the housing assistance efforts a county welfare department must provide to a foster youth who is on the cusp of aging out of the system, expands the information about these efforts the department must report to the juvenile court.

AB 674 (Bennett, 2021) requires reports submitted pursuant to section 391 to verify that the county welfare department has provided the youth with written information relating to CalFresh benefits.

Prior Legislation:

AB 12 (Beall, Chapter 559, Statutes of 2010), *See* Comment 2.

PRIOR VOTES:

Senate Human Services Committee (Ayes 5, Noes 0)

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Assembly Floor (Ayes 79, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Human Services Committee (Ayes 8, Noes 0)
