

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 273 (Ramos)
Version: June 23, 2023
Hearing Date: July 6, 2023
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Foster care: missing children and nonminor dependents

DIGEST

This bill updates and expands the obligations of social workers, probation officers, and juvenile courts when foster youth and nonminor dependents are missing from foster care.

EXECUTIVE SUMMARY

Though foster care is intended to help children who experience, or are at risk of experiencing, abuse or neglect, foster care itself can cause even greater trauma. Disruptive events like placement changes, school changes, and changes in visitation with family members, as well as issues like substance abuse and poor relationships with resource families, can make foster children feel like their best option is to leave their placement. Native children (referred to as “Indian children” to remain consistent with the statutes), who are overrepresented in the foster care system, are especially at risk of running away. Tragically, children who run away are likely to experience additional trauma, such as violence, human trafficking, and murder.

The fact that high numbers of foster children run away from their placements is not news. Nevertheless, current law governing how social workers and others must respond when a foster child goes missing is sparse, and generally delegates to the State Department of Social Services (DSS) the task of developing best practices in such cases. According to the author and sponsor, DSS’s current policies are insufficient, and many counties fail to comply with even the bare minimum requirements.

This bill seeks to provide more robust protections for foster children, wards, and nonminor dependents who go missing from foster care or temporary placements to ensure that these youth are located, returned to safe homes, and supported as soon as possible. To that end, the bill expands the current procedures for attempting to locate

missing children and return them to their homes (or a new placement). The bill's requirements fall into three general categories: (1) notification that the child is missing from foster care, including, when the child is an Indian child, notification of the child's tribe or tribal representative; (2) expedited court review of the child's case and ongoing court oversight; and (3) definitions to maximize the protection of children missing from foster care. DSS must update its policies and procedures to implement the bill's changes no later than June 1, 2024, and county child welfare agencies and probation departments must implement the changes by January 1, 2025. The author has agreed to minor clarifying amendments relating to when the juvenile court must receive notice when a child in care has gone missing.

This bill is sponsored by the California Tribal Families Coalition and the Yurok Tribe (co-sponsor), and is supported by ACLU California Action, the Alliance for Children's Rights, the Bakersfield American Indian Health Project, the California Alliance of Caregivers, the California Alliance of Child and Family Services, California Coalition for Youth, the California Partnership to End Domestic Violence, the Cher-Ae Heights Indian Community of the Trinidad Rancheria, the Habematolel Pomo of Upper Lake Tribe, the National Association of Social Workers - California Chapter, the Picayune Rancheria of the Chukchansi Indians, the Pit River Tribe, and Public Counsel. There is no known opposition. The Senate Human Services Committee passed this bill with a vote of 5-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the juvenile court, which is intended to provide for the protection and safety of the public and minors falling under its jurisdiction, and a state and local system of child welfare services for children who have been adjudged to be dependents of the juvenile court. (Welf. & Inst. Code, §§ 202, 245.)
- 2) Provides that a minor may become a dependent of the juvenile court and be removed from the custody of their parent or guardian¹ on the basis of enumerated forms of abuse or neglect. (Welf. Inst. Code, § 300(a)-(j).)
- 3) Authorizes a peace officer to take temporary custody of a child who may be adjudged a dependent of the juvenile court, if specified imminent dangers are present, and authorizes a social worker to take custody of the child pending a determination of whether the child may be returned to their parent.
 - a) If it is known or there is reason to know the child is an Indian child, the federal Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901 et seq.) (ICWA) imposes a higher burden regarding when a social worker may retain custody,

¹ Going forward, this analysis uses "parent" to include "guardian" and the single includes the plural.

as well as specified procedures regarding notification to the child's tribe and determining whether the child is already under the jurisdiction of an Indian tribal proceeding. (Welf. & Inst. Code, §§305, 306.)

- 4) Authorizes a juvenile court to issue a protective custody warrant when a dependent child has run away from their court-ordered placement; any child taken into protective custody pursuant to such a warrant shall immediately be delivered to the social worker who shall conduct an investigation into the facts and circumstances of the child. (Welf. & Inst. Code, § 340.)
- 5) Requires county welfare agencies and probation departments to develop and implement protocols to expeditiously locate any child missing from foster care, which must, at a minimum, do all of the following:
 - a) Describe the efforts used by county child welfare or probation staff to expeditiously locate any child or nonminor dependent missing from care, including, but not limited to, the timeframe for reporting missing youth, the individuals or entities entitled to notice that a youth is missing, any required initial and ongoing efforts to locate youth, and plans to return youth to placement.
 - b) Require the social worker or probation officer to do all of the following:
 - i. Determine the primary factors that contributed to the child or nonminor dependent running away or otherwise being absent from care.
 - ii. Respond to the factors identified in subsequent placements, to the extent possible.
 - iii. Determine the child's or nonminor dependent's experiences while absent from care.
 - iv. Determine whether the child or nonminor dependent is a possible victim of commercial sexual exploitation.
 - v. Document the activities and information described in (i)-(iv), for federal reporting purposes, consistent with instructions from the Department of Social Services (DSS). (Welf. & Inst. Code, § 16501.35(b).)

This bill:

- 1) Establishes the Luke Madrigal Act.
- 2) Makes findings and declarations as follows:
 - a) The release of a 2022 audit by the DHHS Office of the Inspector General showed that there are several barriers and other deficiencies in California agencies' policies and procedures related to missing foster youth.
 - b) It is the intent of the Legislature to create stronger protections for youth who are missing from foster care in order to expeditiously locate them when they are absent from foster care, improve outcomes for missing foster youth, and reduce the number of instances of missing foster youth by (1) creating

notification requirements, including notice to tribes, the court, and other interested parties, when a youth is absent from foster care; (2) requiring all involved parties to engage in collaborative and timely efforts to locate, place, and stabilize the youth when they return to foster care; and (3) ensure there is judicial oversight of the requirements in (1) and (2).

3) Defines the following terms:

- a) "Absent from foster care" means the whereabouts of a child receiving child welfare services is unknown to the county child welfare agency or probation department, or when the county child welfare agency or probation department has located the child receiving child welfare services in a location not approved by the court that may pose a risk to the child receiving child welfare services, taking into account the age, intelligence, mental functioning, and physical condition of the child receiving child welfare services.
- b) "Child receiving child welfare services" means a child or nonminor dependent placed in a foster care placement, as specified, and includes dependents, nonminor dependents, wards, and minors who have been taken into temporary custody as potential wards of the court who are in foster care.
- c) "Ongoing and intensive due diligence efforts" include, but are not limited to, directing the caregiver to immediately contact the local law enforcement agency to file a missing person's report, where appropriate and with the assistance of the social worker where necessary; no less frequently than every seven days, contacting parents and other specified persons with whom the child receiving child welfare services spends time; contacting roommates, if the child receiving child welfare services is a nonminor dependent in a supervised living placement with roommates; for children under 18 years of age, initiating the protective custody warrant process within 24 hours of learning the child is absent; no less frequently than every 30 days, and as new information is available, searching the child's social media accounts and those of the child's acquaintances and attempting to contact the child through social media; no less frequently than every 30 days, and as new information is available, physically checking all places where the child receiving child welfare services is likely to be located; and reporting to the National Center for Missing and Exploited Children.

4) Requires a social worker who receives information that a child receiving child welfare services is absent from foster care (the child) to do all of the following:

- a) Engage in ongoing and intensive due diligence efforts to locate, place, and stabilize the child.
- b) Request a protective custody order for the child or, if the child is a nonminor dependent, file a missing person's report.
- c) Request that the juvenile court schedule a hearing to review the placement and the ongoing and intensive due diligence efforts to locate and return the child in no later than 10 calendar days.

- d) As soon as possible, but at least five days before the hearing in (c), notify specified persons of the hearing, including the parents (unless such notification has been limited or terminated by the court), the attorneys for the parents and child, the court of jurisdiction, if the child is an Indian child, the tribe or tribal representative of the child, siblings who are entitled to receive notice of the hearing, as specified, and the child's court-appointed special advocate. If the hearing is set to occur in fewer than five court days, the notice must be provided at least 24 hours prior to the hearing.
 - e) Prepare, submit, and serve a report at the hearing and any subsequent hearings describing their ongoing and intensive due diligence efforts to locate, place, and stabilize the child, and to comply with existing county protocols. To the extent possible, the social worker must work to address the factors that contributed to the child being absent from care in subsequent placements.
 - f) Upon the return to foster care of the child, conduct an in-person interview with the child immediately and, within 24 hours of learning of the return: assess and make a plan to address the child's immediate needs; document the reasons why the child was absent from care and the experiences the child had while absent; assess the appropriate placement for the child upon their return; and request the recall of any protective custody warrant issued under (b).
- 5) Requires the clerk of the juvenile court, upon being notified by the social worker that a child is absent from foster care, to set the matter for hearing on the court's hearing calendar as soon as possible, but no later than 10 court days from the date of the notice.
 - 6) Permits the court, at the hearing under 4), to inquire of interested parties who may be able to provide information leading to the safe return of the child and direct the social worker to take appropriate actions to locate the child.
 - 7) Requires the court to consider the safety of the child and determine both of the following:
 - a) The extent of the activities and the compliance of the county with the case plan in making ongoing and intensive due diligence efforts to locate and return the child to a safe placement. If it is known, or there is reason to know, that the child is an Indian child, the court shall also determine whether the county has made active efforts, as defined, to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.
 - b) The continuing necessity for and appropriateness of the placement when the child returns. If the court has issued a warrant, the court may order the social worker or probation officer to place, rather than detain, the court if the child returns to care before the court can recall the warrant.

- 8) Requires the court to periodically review the case of the child at least every 30 calendar days until the child returns. The court may conduct the review at a regularly scheduled hearing if it falls within the 30-day timeline.
- 9) Establishes the same framework set forth in 3)-8) for wards of the juvenile court who are absent from foster care, with the social worker sharing certain responsibilities with the child's probation officer.
- 10) Requires the existing policies developed and implemented by county child welfare agencies and probation policies to expeditiously locate any child absent from foster care to also apply to nonminor dependents, and adds additional requirements as follows:
 - a) The policies must describe the intensive due diligence efforts imposed by this bill and require compliance with those requirements.
 - b) When a social worker or probation officer determines that a child or nonminor dependent is absent from foster care, they must provide notification immediately, and in no case later than 24 hours from discovery, to the persons listed in 4)(d) and the local law enforcement agency. The notice must include an agency contact that noticed persons may reach for additional information.
- 11) Requires DSS, in consultation with stakeholders including, but not limited to, the County Welfare Directors Association of California, the Chief Probation Officers of California, former foster youth, child advocacy organizations, and Indian tribes in California, to update its existing model policies and protocols for absent foster children, no later than June 1, 2024, to implement the changes made by this bill. County child welfare agencies and probation departments must implement the changes to their protocols no later than January 1, 2025.

COMMENTS

1. Author's comment

According to the author:

Confronting the crisis of Missing and Murdered Indigenous People, the majority of whom are women and girls, has been a legislative priority since my election to the Assembly. The rates of murdered and missing people in Native American communities is a shameful state and national tragedy that does not receive the scrutiny and attention it deserves. AB 273 is one aspect of this issue as it deals with missing foster youth, especially with tribal youth. The bill works to formalize best practices by requiring notification when a child goes missing in foster care. We need to better protect, locate, place, and stabilize children when they go missing in foster care.

2. Children in foster care go missing at alarmingly high rates

In 2018, investigative reporters found that tens of thousands of foster children had gone missing and, apparently, no one was trying to find them.² Records showed that, since 2000, “child welfare agencies across the country closed the cases of more than 53,000 foster kids listed as ‘runaway’ and at least another 61,000 children listed as ‘missing.’”³ The Children’s Bureau within DHHS determined that, as of September 2018, an estimated 4,247 youth in foster care were currently reported to have run away.⁴ Foster youth who have run away “are at high risk of being sexually or physically victimized, engaging in delinquent behavior, using drugs or alcohol, or being the victims of human trafficking.”⁵

In response to the reports of states closing cases on missing foster children, the DHHS Office of Inspector General conducted a series of audits related to children missing from foster care, pursuant to its oversight authority under the federal foster care program authorized by Title IV-E of the Social Security Act. An audit released in May 2022 found that, between 2001 and 2021, there were 110,446 missing children episodes; in most states, the average time that a child was missing ranged from 7 to 46 days, but 9 states reported average times of over 50 days.⁶ California reported 10,893 missing children episodes in that period, comprising about five percent of the State’s foster population, with an average duration of 41 days.⁷

The State’s Native population is particularly likely to suffer when the State’s child welfare agencies do not proactively work to find missing children. As explained by the California Tribal Families Coalition, one of the bill’s sponsors:

Native people, especially Indigenous women and girls are disproportionately affected by violence, human trafficking, and murder, and become “missing” at much higher rates than people of other racial groups. Native children also enter the child welfare system at a rate that is 2.7 times their representation in the population, the highest of any racial group (NICWA 2017). National data shows that 85 percent of all missing Indigenous children over a 10-year period were endangered runaways.

² Rasmussen & Smith, *Missing and Forgotten: Thousands of foster kids kicked out of the system*, Boston 25 News (May 23, 2018), <https://www.boston25news.com/news/missing-and-forgotten-thousands-of-foster-kids-kicked-out-of-the-system/755376482/>. All links in this analysis are current as of June 30, 2023.

³ *Ibid.*

⁴ Child Welfare Information Gateway, *Responding to Youth Missing From Foster Care* (2020), p. 1, https://www.childwelfare.gov/pubPDFs/missing_youth.pdf.

⁵ *Ibid.*

⁶ DHHS, Office of Inspector General, *National Snapshot of State Agency Approaches to Reporting and Locating Children Missing From Foster Care* (May 2022) A-07-20-06905, p. 5.

⁷ *Id.* at pp. 8-10.

3. The State's current policies and procedures for identifying and locating runaway foster youth

In 2015, the Legislature passed SB 794 (Senate Committee on Human Services, Ch. 425, Stats. 2015), which implemented the current framework for county child welfare departments and probation departments when a child has gone missing from foster care. The bill was intended to bring State law into conformity with new federal requirements regarding state programs for sex trafficking prevention, intervention, data collection and reporting; the reasonable and prudent parent standards; adoption incentives payments; successor guardianship, and successful adulthood.

DSS subsequently issued administrative guidance for the implementation of SB 794, establishing minimum statewide standards necessary to comply with federal law.⁸ The guidance made clear that counties could add additional local requirements.⁹ In 2017, DSS issued another guidance which provided counties with information on promising practices to locate and respond to youth who are missing from care.¹⁰ Nevertheless, neither the current statutes nor administrative guidance require counties to implement known best practices, nor do they include commonsense measures such as, when an Indian child is missing, contacting the child's tribe; there are also no requirements that the juvenile court be notified or conduct any oversight into the attempts to locate the child.

Additionally, the author and sponsors report that counties are frequently out of compliance with federal, state, and administrative requirements. For example, according to the Yurok Tribe, a sponsor of the bill:

As of March 2023, Humboldt County failed to conduct investigations within the 40 calendar days required by Div. 31 regulations in 234 of the county's 351 open "Emergency Response" Investigations. Of those 351 open cases, 61 investigations involved Yurok Tribal members and 54 of those, 88.5 percent, were out of compliance with the 40-day report requirement. This experience is not unique to the Yurok Tribe. California's northern tribes reported to California's Department of Social Services in March 2023 that Humboldt County has continued ineffective past practices of tribal family separation by failing to comply with their investigation obligations in 83 percent of the cases involving tribal families. Nothing the Yurok Tribe has observed since March suggests any of that has changed since the tribes' meeting with California's Department of Social Services.

⁸ See DSS, All-County Letter No. 16-15 (Apr. 28, 2016).

⁹ *Id.* at p. 4.

¹⁰ DSS, All County Information Notice No. I-13-17 (Apr. 25, 2017).

4. This bill establishes an enhanced procedural framework for responding to a child reported missing from foster care

This bill imposes specific statutory requirements and processes for when a child in foster care (including a nonminor dependent or a ward of the court in temporary custody under certain circumstances) goes missing from their placement. The bill provides specific steps that caregivers, social workers, and, where relevant, probation officers must take when a child is discovered missing; and, importantly, charges the juvenile court with ongoing oversight into the efforts being made to locate the child.

First, the bill implements a series of steps the social worker (or probation officer, where appropriate) must take when they discover that a child is absent from foster care. The first step is to engage in ongoing and intensive due diligence efforts to locate the child, which include contacting persons in the child's life such as friends, relatives, and, if the child is an Indian child, their tribe or tribal representative; searching the child's social media accounts; directing the caregiver to file a missing person's report or warrant, as appropriate; and physically checking all places where the child is likely to be located.

Second, the bill provides for court oversight of the attempt to find the child. Upon learning that the child is missing, the social worker must request that the juvenile court schedule a hearing for the court to review the missing child's placement and the social worker's ongoing efforts to locate the child. The clerk of the court must set the hearing for no later than 10 court days from the date of receiving the notice from the social worker. The social worker must prepare a report with specified information in advance of the hearing; notice of the hearing and the report must be provided to the child's attorney(s), specified relatives, and, if the child is an Indian child, their tribe or tribal representative. The court may direct the social worker to take additional appropriate actions to find the child. In the unfortunate case where the child is not found quickly, the court must continue its oversight, holding hearings at least every 30 days. The author has agreed to clarifying amendments to ensure that the social worker or probation officer seeks a hearing as soon as they learn the child is missing and to clarify that the hearing must be held within 10 court days.

Third, the bill adds steps to ensure that, when a child is located, (1) the conditions that led them to leave are addressed, and (2) they are properly screened for any traumatic events they may have encountered while missing, including sex trafficking. Among other things, the court has the authority to determine that the child should not be returned to their prior placement. The social worker is also tasked with attempting to address, in subsequent placements and with the family team, the factors that led to the child going missing.

The bill requires DSS to implement the new framework through updated policies and procedures which must be in place by June 1, 2024. DSS must consult with stakeholders, including tribes in California and former foster youth, in developing those new policies

and procedures. County child welfare agencies must implement the changes no later than January 1, 2025.

5. Amendments

As noted above, the author has agreed to amendments to clarify the social worker or probation officer's obligation to contact the juvenile court after they learn that a child is missing. Specifically, the amendments clarify that the hearing must be scheduled within 10 court days (not calendar days) of when the social worker or probation officer learns that the child is missing; and that the social worker or probation officer must request the hearing the same day they learn the child is missing, or, if the court is closed when they learn the child is missing, on the next court day. The amendments are set forth below, subject to any nonsubstantive changes the Office of Legislative Counsel may make:

Amendment 1

On page 4, in line 8, after "hearing" insert "within 10 court days".

Amendment 2

On page 4, in line 11, strike out "care in no case later than 10 calendar days." and insert "care. The social worker shall request the hearing on the date they learn of the absence or, if the court is closed, on the first court day thereafter."

Amendment 3

On page 8, in line 23, after "hearing" insert "within 10 court days".

Amendment 4

On page 8, in line 26, strike out "care in no case later than 10 calendar days." and insert "care. The social worker shall request the hearing on the date they learn of the absence or, if the court is closed, on the first court date thereafter."

6. Arguments in support

According to Habematolel Pomo of Upper Lake Tribe:

AB 273 will protect children by creating a more family centered and child focused process to locate, return, and stabilize children and youth who go missing while in the care, custody, and control of the child welfare system. Current state law requires county child welfare agencies and probation departments to develop and implement specific protocols to quickly locate any

child missing from foster care. However, county practices are routinely out of compliance with federal and state laws, and the California Department of Social Services minimum standards guidance.

AB 273 creates a more inclusive notification protocol for Tribes and families when a child goes missing from care, mandates action where there is merely guidance now, and creates a stronger oversight role for the courts. It gives the court with jurisdiction over a child a real time opportunity to assess whether the current placement is in fact safe for the child before the child is returned there, and it reduces the recurrence of abuse and sexual exploitation, which our current federal and state laws were enacted to combat.

SUPPORT

California Tribal Families Coalition (co-sponsor)
Yurok Tribe (co-sponsor)
ACLU California Action
Alliance for Children's Rights
Bakersfield American Indian Health Project
California Alliance of Caregivers
California Alliance of Child and Family Services
California Coalition for Youth
California Partnership to End Domestic Violence
Cher-Ae Heights Indian Community of the Trinidad Rancheria
Habematolel Pomo of Upper Lake Tribe
National Association of Social Workers - California Chapter
Picayune Rancheria of the Chukchansi Indians
Pit River Tribe
Public Counsel

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: SB 794 (Senate Committee on Human Services, Ch. 425, Stats. 2015) among other things, added the requirement that county child welfare agencies and probation departments implement policies and procedures that require social workers and probation officers to take specified steps when a child has gone missing from foster care.

PRIOR VOTES:

Senate Human Services Committee (Ayes 5, Noes 0)
Assembly Floor (Ayes 78, Noes 0)
Assembly Appropriations Committee (Ayes 15, Noes 0)
Assembly Judiciary Committee (Ayes 11, Noes 0)
