

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

SB 9 (Cortese)
Version: March 8, 2023
Hearing Date: April 18, 2023
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Raising the Age for Extended Foster Care Act of 2023

DIGEST

This bill extends the maximum age for foster care to 21 years of age for nonminors who are experiencing homelessness or at risk of experiencing homelessness.

EXECUTIVE SUMMARY

Many children who become dependents of the juvenile dependency system remain so when they are, at least chronologically, no longer children; the juvenile court retains jurisdiction over certain dependents until they attain the age of 21 years. California extended its foster care program to youths between 18 and 21 years of age in 2010 – known as “nonminor dependents” – in recognition of the extreme hardship many former foster youths faced after being emancipated from the foster system at 18 years old; data showed that former foster youths were less likely to graduate from high school or college and were more likely to be homeless.

Unfortunately, many nonminors exiting foster care when they turn 21 years of age still face considerable hardships transitioning to independent living, many of which were exacerbated by the COVID-19 pandemic’s disruptions. The Legislature enacted a temporary one-year extension of benefits for nonminors who turned 21 during a specific time frame during the pandemic, but that extension has since expired.

This bill extends foster benefits for a specific category of nonminors: those who are between the ages of 21 and 22 and who are experiencing homelessness or are at substantial risk of experiencing homelessness without the extension. This measure is intended to provide a wider safety net to the young adults who are transitioning from foster care to fully independent living. The author has agreed to amendments to clarify the procedure surrounding the court’s determination of whether a nonminor who is 21 years of age may continue to receive benefits.

This bill is sponsored by the Juvenile Court Judges section of the California Judges Association and is supported by the California Black Health Network, Los Angeles Dependency Lawyers, Inc., the Pacific Juvenile Defender Center, and Safe Place for Youth. There is no known opposition. This bill passed out of the Senate Human Services Committee with on vote of 5-0.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Provides federal programs and funding for state programs for foster and adopted children; at the election of a state, a state may receive federal participation if it extends its foster programs to nonminor dependents who have not yet attained 21 years of age, provided certain conditions are met. (42 U.S.C. §§ 675(8), 473(a).)

Existing state law:

- 1) Establishes 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 nonminor dependent, between the age of majority and 21 years, under specified conditions. A nonminor dependent under the jurisdiction of the juvenile court retains their legal decision-making authority as an adult, except as specified. (Welf. & Inst. Code, §§ 303, 388(e).)
- 2) Defines “nonminor dependent” for purposes of 1)(c) 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).)
- 3) Requires the court, before exercising continuing jurisdiction over a nonminor, to find that the nonminor has been informed of their options, including the benefits of remaining in foster care and the right to petition to reenter foster care by resuming dependency jurisdiction. (Welf. & Inst. Code, § 391(e).)
- 4) Requires a nonminor to satisfy one or more of the following participation requirements to remain under a foster care order under 1)(c):
 - a) The nonminor is completing secondary education or a program leading to an equivalent credential.
 - b) The nonminor is enrolled in an institution that provides postsecondary or vocational education.

- c) The nonminor is participating in a program or activity designed to promote, or remove barriers to, employment.
 - d) The nonminor is employed for at least 80 hours per month.
 - e) The nonminor is incapable of doing any of the activities in (a)-(d) due to a medical condition, and that incapability is supported by regularly updated information in the case plan of the nonminor, as specified. (Welf. & Inst. Code, § 11403(b).)
- 5) Requires the court to review the status of every minor or nonminor dependent in foster care at least once every six months, as specified. (Welf. & Inst. Code, § 366.)
- 6) Establishes that a juvenile court has transitional jurisdiction over a minor who is a ward and between 17 years and five months of age and younger than 18, or is between the ages of 18 and 21 and was a ward subject to an order of foster care placement before they reached 18 years of age, and certain criteria regarding whether the minor or nonminor's rehabilitative goals are satisfied. (Welf. & Inst. Code, § 450.)
- 7) Requires a caseworker or other appropriate staff and other representatives of a foster youth or nonminor dependent to provide the youth or nonminor dependent with a 90-day transition plan, at the direction of the youth or nonminor dependent, that includes options regarding housing, health insurance, education, workforce supports and other services, for when the youth or nonminor dependent exits foster care. (Welf. & Inst. Code, § 16501.1(g)(16).)
- 8) Requires the court to continue jurisdiction over a qualified nonminor dependent unless:
- a) The nonminor does not wish to remain subject to dependency jurisdiction.
 - b) The nonminor is not participating in a reasonable and appropriate transitional independent living case plan. (Welf. & Inst. Code, § 391(e)(1).)
- 9) Provides that, if a juvenile court terminates its jurisdiction over a nonminor dependent, the nonminor dependent remains under the general jurisdiction of the court to allow for a petition to resume jurisdiction. (Welf. & Inst. Code, § 303(b).)
- 10) Authorizes a nonminor who has not attained 21 years of age to petition the court in which they were previously found to be a dependent or delinquent child of the juvenile court for a hearing to determine whether to resume jurisdiction over the nonminor, provided the nonminor meets the criteria for extended foster care. If the nonminor makes a prima facie showing that those criteria are met, the court that retained general jurisdiction shall hold a hearing on the petition within 15 judicial days of the filing of the petition. (Welf. & Inst. Code, §§303(c), 388, 388.1.)

- 11) Requires a court to resume dependency jurisdiction pursuant to 10) if the court finds that specified criteria are met, including that the nonminor has not yet attained 21 years of age and the nonminor intends to satisfy, and agrees to satisfy, the criteria in 4).

This bill:

- 1) Establishes the Raising the Age for Extended Foster Care Act of 2023.
- 2) Makes findings and declarations regarding research on the benefits of extended foster care and the prevalence of homelessness among youths after they exit the foster system.
- 3) Authorizes a juvenile court to retain jurisdiction over a nonminor dependent until the nonminor dependent reaches 22 years of age if the nonminor dependent is experiencing homelessness or is at reasonable risk of experiencing risk of homelessness if they are not under the jurisdiction of the juvenile court.
 - a) The bill also modifies statutes addressing the eligibility for benefits and assistance for nonminor dependents, care plans, and other assistance provided to nonminor dependents to reflect the expansion to qualified 21-year-olds.
- 4) Provides that, if a juvenile court terminates its jurisdiction over a nonminor dependent under 22 years of age who is experiencing homelessness or is at risk of homelessness, the nonminor dependent remains under the general jurisdiction of the court in order to permit a petition to re-exercise jurisdiction.
- 5) Permits a nonminor who has not yet attained 22 years of age and who exited foster care to petition the court to resume dependency jurisdiction over themselves.
- 6) Requires the report filed prior to every review hearing for a nonminor dependent between 20 to 21 years of age, inclusive, whether the nonminor dependent is experiencing homelessness or is at reasonable risk of experiencing homelessness if they are not under the jurisdiction of the juvenile court.
- 7) Permits a nonminor who is between 21 and 22 years of age for whom the court has dismissed dependency jurisdiction to petition the court to resume dependency jurisdiction; the court that retained general jurisdiction shall order a hearing within 15 judicial days of the filing of the petition if the nonminor makes a prima facie showing that they are experiencing homelessness or are at risk of experiencing homelessness if they are not under the jurisdiction of the juvenile court.
- 8) Requires a court to resume dependency jurisdiction over a nonminor between 21 and 22 years of age pursuant to 7) if the court finds that the nonminor, in addition to

satisfying the existing criteria, is experiencing homelessness or is at reasonable risk of experiencing homelessness if they are not under the jurisdiction of the juvenile court. If the court makes this finding, it must do so on the record and by a preponderance of the evidence.

- 9) Requires the county welfare department, at any hearing to consider whether to terminate jurisdiction over a nonminor who is between 20 and 21 years of age, inclusive, to describe whether the nonminor is experiencing homelessness or would be at reasonable risk of experiencing homelessness if they are not under the jurisdictional court; and generally updates existing reporting requirements to account for nonminor dependents under the age of 22.
- 10) Expands the juvenile court's transition jurisdiction of the juvenile court to include nonminors who have not yet attained 22 years of age and whom the court has found to be experiencing homeless or at reasonable risks of homelessness if they are not under jurisdiction of the juvenile court, and the court makes that finding on the record by a preponderance of the evidence.
- 11) Requires, prior to a hearing on whether to terminate transition jurisdiction over a nonminor dependent between the ages of 21 and 22, the county agency to submit a report including whether the nonminor dependent is experiencing homelessness or is at reasonable risk of experiencing homelessness if the nonminor is not under the jurisdiction of the juvenile court. If the court terminates transition jurisdiction, it shall retain general jurisdiction to allow for a petition to resume jurisdiction.
- 12) Makes nonsubstantive technical and conforming changes.

COMMENTS

1. Author's comment

According to the author:

The COVID crisis has caused an unprecedented impact on our most vulnerable youth. Data shows a decline in outcomes resulting from the pandemic, making it clear that foster youth need a wider safety net. We owe it to them to provide the security they need to set them up for success as they transition to independence. Ultimately, SB 9 will give qualifying foster youth more time to address the effects of their trauma, make strides towards their education and employment opportunities and accumulate support before transitioning out of the system.

2. Background on California's expansion of foster care benefits to nonminor dependents between 18 and 21 years of age

In October 2008, the federal government enacted the Fostering Connections to Success and Increasing Adoptions Act,¹ which, among other things, offered additional funding to states that opted to extend foster care to youths from 18 to 21 years of age. Two years later, the Legislature enacted the California Fostering Connections to Success Act (the Act)² that authorized the juvenile courts to exercise jurisdiction over, and extend foster care benefits to, nonminor dependents between the ages of 18 to 21 who are eligible for specified public assistance and when 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.³

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.⁴

For the last 14 years, California's population of children and youths in foster care has hovered around 60,000, though it is currently down to just over 52,000.⁵ Prior to the Act, the statistics surrounding 18-year-olds' emancipation from foster care were bleak: foster youth, when compared to other young adults of the same age and race, were less likely to complete high school, attend college, or be employed, and were at a higher risk of becoming homeless, arrested, or incarcerated.⁶ The Act and related subsequent legislation were intended to provide foster youth with the option of a smoother transition to independent adulthood. Since the Act's passage, the number of foster

¹ P.L. 110-351 (2008).

² AB 12 (Beall, Ch. 559, Stats. 2010).

³ Welf. & Inst. Code § 11403.

⁴ 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).

⁵ California Child Welfare Indicators Project, University of California at Berkeley, Report: Children in Foster Care, CWS/CMS 2022 Quarter 4 Extract (Apr. 8, 2023), available at <https://ccwip.berkeley.edu/childwelfare/reports/PIT/MTSG/r/ab636/s>. All links in this analysis are current as of April 14, 2023.

⁶ See Public Policy Institute of California, *Foster Care in California* (2010).

youth between 18 and 21 years of age has increased considerably, from under 2,500 in 2010 to 7,170 in October 2022.⁷

Despite these reforms, former foster youth still face significant barriers, particularly with respect to securing housing after they transfer out of the state’s care. A survey conducted by the University of Chicago’s Chapin Hall reported that more than 25 percent of former foster youth in California reported experiencing at least one night of homelessness in the past two years, while nearly 30 percent said they had couch surfed by staying with friends because they lacked housing.⁸ The study questioned “the wisdom of abruptly curtailing services for these young people when they reach their 21st birthday”⁹ and stated “when COVID-19 is behind us, it will still be the case that many young adults in case could potentially benefit from ongoing care past their 21st birthday.”¹⁰

In recent years, several measures have been introduced to raise the foster age past 21.¹¹ Near the beginning of the COVID-19 pandemic, the Legislature extended foster benefits for a one-year period to nonminors who turned 21 years of age between April 17, 2020, and June 30, 2021; that extension has now expired.¹² Efforts to extend foster care on a permanent basis, however, have fared poorly. Last year, the Legislature enacted bills that would have expanded the Independent Living Plan (ILP) to include current and former youth up to the age of 23, as specified,¹³ and that would have authorized nonminor dependents to remain in foster care past the age of 21 for the limited purpose of ensuring that certain transition-related requirements were fulfilled.¹⁴ Governor Newsom vetoed both bills, citing cost concerns.¹⁵

3. This bill extends foster care to nonminors up to the age of 22 who are experiencing homelessness or at reasonable risk of experiencing homelessness without foster care

In recognition of the difficulties faced by young adults exiting out of the foster care program by the age of 21, and particularly the high rates of homelessness, this bill extends the availability of foster care to nonminors up to the age of 22, if they are experiencing homelessness or are at reasonable risk of experiencing homelessness if

⁷ *Ibid.*

⁸ Courtney, et al., *Findings from the California Youth Transitions to Adulthood Study (CalYOUTH): Conditions of youth at age 23* (2020) Chapin Hall at the University of Chicago, pp. 18-19, available at https://www.chapinhall.org/wp-content/uploads/CY_YT_RE1020.pdf.

⁹ *Id.* at p. 156.

¹⁰ *Id.* at p. 157.

¹¹ See Prior legislation section.

¹² SB 115 (Committee on Budget and Fiscal Review, Ch. 40, Stats. 2020); AB 89 (Ting, Ch. 7, Stats. 2020).

¹³ AB 2306 (Cooley, 2022).

¹⁴ AB 2189 (Friedman, 2022).

¹⁵ See Governor’s veto message to Assem. on Assem. Bill No. 2189 (Sept. 18, 2022), Recess Journal No. 10 (2021-2022 Reg. Sess.) p. 6737; Governor’s veto message to Assem. on Assem. Bill No. 2306 (Sept. 18, 2022) Recess Journal No. 10 (2021-2022 Reg. Sess.) p. 6740.

they are not under the jurisdiction of the juvenile court and otherwise meet the criteria for foster benefits for nonminor dependents. The bill also updates various provisions within the Welfare and Institutions Code to reflect the expanded availability, including reporting requirements and the availability of specific benefits. The author has agreed to amendments to clarify the procedure for determining whether a soon-to-be 21-year-old nonminor meets the conditions for continuing to receive benefits for up to for another year.

As discussed in Part 2 of this analysis, the federal government offers funding for state foster care programs that allow nonminors to remain in foster care up to the age of 21.¹⁶ Nothing in the relevant federal laws suggests that the conditions for receiving federal funds for foster youth up to the age of 21 are also intended to prohibit a state, on its own, from extending foster benefits beyond that age.¹⁷ There is thus likely no preemption concern presented by this bill: unless a federal statute expressly preempts state law, federal law will be found to preempt state law only if Congress clearly intended to occupy the field in a particular area or if the state and federal laws conflict.¹⁸ The fact does remain that the state would not receive any federal funding for nonminor dependents in foster care between the ages of 21 and 22, but that issue is beyond the scope of this analysis.

4. Amendments

As noted above, the author has agreed to amend the bill to clarify the procedures by which a juvenile court shall find whether a 20-year-old who is close to turning 21 years of age is experiencing homelessness or is at risk of experiencing risk of homelessness, for purposes of ruling that the nonminor qualifies for the extra year of foster care.

The amendments are as follows, subject to any nonsubstantive changes the Office of Legislative Counsel may make:

Amendment 1

At page 6, in line 11, after “dependency.” insert:

The child is informed that if as a nonminor they leave the jurisdiction of the juvenile court at age 18 while subject to an order for foster care placement, the nonminor can petition to resume juvenile court jurisdiction under section 388 subdivision (e) at any time until the nonminor attains 21 years of age or 22 years of age if the nonminor is experiencing homelessness or is at reasonable risk of homelessness if they are not under the jurisdiction of the juvenile court.”

¹⁶ P.L. 110-351 (2008).

¹⁷ 42 U.S.C. §§ 671-679c.

¹⁸ *E.g., Crosby v. National Foreign Trade Council* (2000) 530 U.S. 363, 372.

Amendment 2

At page 31, after line 27, add a new subdivision (d) to Welfare and Institutions Code section 391 that reads:

(d) At the last regularly scheduled review hearing held pursuant to subdivision (d) of Section 366.31 before a nonminor attains 21 years of age, the child welfare office shall submit a report describing the nonminor's housing and whether the nonminor is experiencing homelessness or would be at reasonable risk of homelessness if they are not under the jurisdiction of the juvenile court.

Amendment 3

At page 32, after line 27, add a new subparagraph (C) to subdivision (e) (which will be subdivision (f) after Amendment 2) of Welfare and Institutions Code section 391 that reads:

(C) That the nonminor is about to turn 21 years old and is not experiencing homelessness or at reasonable risk of homelessness.

5. Arguments in support

According to the Juvenile Court Judges of California, a section of the California Judges Association and the sponsor of the bill:

SB 9 builds upon the FY 2020-2021 budget's effort during the pandemic to help former foster youth by extending benefits beyond age 21. SB 9 allows youth who ages out of the existing extended foster care (EFC) program to receive one additional year of services if the youth is at risk of becoming homeless. Specifically, this bill grants the juvenile court judge to make the determination about whether to extend services to the youth. We believe the extension of these necessary benefits for our most at risk former foster youth.

SUPPORT

California Judges Association, Juvenile Court Judges of California section (sponsor)
California Black Health Network
Los Angeles Dependency Lawyers, Inc.
Pacific Juvenile Defender Center
Safe Place for Youth

OPPOSITION

None known

RELATED LEGISLATION

Pending legislation: AB 867 (Friedman, 2023) authorizes foster youth to remain in extended foster care beyond the age of 21 for the limited purpose of compliance with specified verifications of the information, documents, and services that are required to be provided by the county welfare department to the foster youth prior to emancipation, and required a county to provide certain benefits to specified foster youth regardless of whether they are living in approved placements. AB 867 is pending before the Assembly Appropriations Committee.

Prior legislation:

SB 1300 (Durazo, 2022) would have extended county Supplemental Security Income (SSI) screening and application duties for foster youth to include nonminor dependents. SB 1300 died in the Assembly Appropriations Committee.

AB 2502 (Cervantes, 2022) would have extended juvenile court jurisdiction and support to nonminor dependents who turn 21 years of age during a statewide state of emergency declared by the Governor, as specified. AB 2502 died in the Senate Appropriations Committee.

AB 2306 (Cooley, 2022) would have expanded and modernized the Independent Living Program (ILP) to include current and former foster youth up to 22 years of age, and, subject to an appropriation and federal approval, up to age 23, and expanded the services for which counties could provide stipends to assist youth with specified independent living needs to include former foster youth up to 25 years of age, as specified. AB 2306 was vetoed by Governor Gavin Newsome, who stated in his veto message that “[w]hile an expanded ILP would benefit more transition-aged youth, millions of dollars would be needed to implement the proposed expansion, and funds were not provided in the budget for this purpose.”

AB 2189 (Friedman, 2022) was substantively similar to AB 867 (Friedman, 2023), and would have authorized foster youth to remain in extended foster care beyond the age of 21 for the limited purpose of compliance with specified verifications of the information, documents, and services that are required to be provided by the county welfare department to the foster youth prior to emancipation, and required a county to provide certain benefits to specified foster youth regardless of whether they are living in approved placements. AB 2189 was vetoed by Governor Newsom, who stated in his veto message that, while he applauded the author’s intent in seeking to ensure that services are appropriately provided before foster youth age out of the program, the bill

raised policy, implementation, and budgetary considerations that led him to veto the bill.

SB 912 (Beall, 2021), would have made an nonminor dependent who turned 21 years of age between March 4, 2020, and June 30, 2021, eligible to continue receiving extended foster care support through June 30, 2021; and, for a state of emergency declared by the Governor on or after January 1, 2021, required that extended foster care support continue for six months from the date of the declaration for a nonminor dependent who turned 21 years of age while the state of emergency is in effect. SB 912 was vetoed by Governor Gavin Newsom, who stated in his veto message that, because disasters and pandemics vary and are difficult to predict, the bill would obligate the State to a specific approach that may not always be the most prudent or effective.

SB 100 (Hurtado, 2021) would have required the State Department of Social Services (CDSS) to convene a working group of representatives from specified state agencies and stakeholders to examine the extended foster care program and make recommendations for improvements to the program, and to submit a report to the Legislature with recommendations on or before July 1, 2022. SB 100 died in the Senate Appropriations Committee.

AB 748 (Gipson, Ch. 682, Stats. 2019) provided that a youth who was subject to an order for foster care before they reached 18 years of age, but was not yet adjudged a dependent of the juvenile court before reaching their 18th birthday, is eligible for extended foster care benefits.

AB 2337 (Gipson, Ch. 539, Stats. 2018) expanded the circumstances under which a nonminor dependent under the age of 21 who was previously a dependent or delinquent of the juvenile court may petition to assume dependency jurisdiction to include a youth who met all of the existing eligibility requirements, except received SSI benefits in lieu of foster care payments.

PRIOR VOTES:

Senate Human Services Committee (Ayes 5, Noes 0)
