

## CONCURRENCE IN SENATE AMENDMENTS

AB 640 (Cooley)

As Amended August 30, 2021

Majority vote

**SUMMARY**

Permits a county to petition the juvenile court on behalf of certain nonminor dependents (NMDs) to terminate dependency or transition jurisdiction over the youth and immediately re-establish jurisdiction in order to establish the NMD's eligibility for federal financial participation; expands the definition of a voluntary re-entry agreement to include an agreement between a NMD who has not signed a voluntary re-entry agreement after attaining 18 years of age and for whom a petition to terminate jurisdiction will be filed.

*As passed by the Assembly, this bill:*

- 1) Permitted, for any NMD who attained 18 years of age while subject to an order for foster care placement and who has not attained 21 years of age and who was ineligible for federal foster care benefits prior to turning age 18, the county child welfare services agency, probation department, or tribal placing agency to, on behalf of and with the consent of the NMD, petition the court to dismiss its dependency or transition jurisdiction and immediately resume the dependency or transition jurisdiction in order to establish the NMD's eligibility for federal financial participation.
- 2) Required a petition for dismissal and re-entry to include notice to the NMD and the NMD's attorney.
- 3) Required, if the court grants a petition to terminate dependency or transition jurisdiction, the court, upon terminating dependency or transition jurisdiction, to maintain general jurisdiction over the NMD and immediately resume dependency or transition jurisdiction. Further, permitted the court to grant a petition without a hearing.
- 4) Specified that certain requirements related to wards of the court, as specified, do not apply to a petition to terminate dependency or transition jurisdiction, as described by the provisions of this bill.
- 5) Prohibited, if the NMD for whom a petition has been filed pursuant to the provisions of this bill, established a transitional independent living plan (TILP) prior to filing the petition, the agency responsible for the NMD's placement care from being required to prepare a new TILP, as specified.
- 6) Prohibited, if a NMD for whom a petition has been filed pursuant to the provisions of this bill, has signed a voluntary re-entry agreement after attaining 18 years of age, but prior to the filing of the petition, the NMD from being required to sign a new voluntary re-entry agreement. Further, required, if the NMD has not previously signed a voluntary re-entry agreement after attaining 18 years of age, the county child welfare, probation, or tribal agency to ensure that the NMD signs a voluntary re-entry agreement prior to filing a petition.

- 7) Required the county child welfare, probation, or tribal placing agency to ensure that the NMD does not experience a break in services or supports before, during, or after the filing or granting of a petition pursuant to the provisions of this bill.
- 8) Prohibited a county child welfare, probation, or tribal placing agency from filing a petition pursuant to the provision of this bill for an undocumented NMD.
- 9) Required, no later than June 1, 2022, the Judicial Council to develop and implement standards, and develop and adopt appropriate forms, as necessary to implement the provisions of this bill.
- 10) Expanded the definition of "voluntary re-entry agreement" to include a written agreement between a NMD who has not signed a voluntary re-entry agreement after attaining 18 years of age and for whom a petition will be filed, and, if applicable, the NMD's agreement to participate in the filing of a petition pursuant to the provisions of this bill.
- 11) Required, if a TILP was not previously completed for a NMD, a TILP be developed within 60 days of a nonminor's re-entry to foster care.
- 12) Defined "eligibility for federal financial participation" to mean that the payment is consistent with a federally approved state plan authorizing federal financial participation in an Aid to Families with Dependent Children-Foster Care (AFDC-FC) payment, as defined in current state law. Further, prohibits, until and unless federal financial participation is obtained, no AFDC-FC payment may be made from either state or county funds on behalf of a child determined to be eligible for AFDC-FC solely as a result of certain litigation, as specified.
- 13) Permitted a county child welfare, probation, or tribal placing agency to re-determine a NMD's eligibility for federal financial participation after the court has resumed dependency or transition jurisdiction over the youth, pursuant to the provisions of this bill
- 14) Required CDSS, no later than July 1, 2022, or upon the receipt of any necessary federal approvals, to develop and disseminate guidance to county child welfare, probation, and tribal agencies on recommended procedures to follow in order to transition a youth to the EFC program in a manner that enables the county to re-determine the youth's eligibility for federal financial participation, pursuant to current law.
- 15) Required the procedures developed pursuant to the provisions of this bill to take into consideration input from stakeholders, including but not limited to, the exclusive representative of county child welfare and probation agencies, the Judicial Council, child welfare workers, dependency counsel for children, and current and former foster youth.
- 16) Instructed the director CDSS, no later than July 1, 2022, to seek any federal approval necessary to implement certain provisions of this bill.
- 17) Made technical and conforming changes.

### **Senate Amendments**

- 1) Extend the date by which the Judicial Council is required to develop and implement rules, and develop and adopt appropriate forms in order to implement the provisions of this bill from June 1, 2022, to September 1, 2022.

- 2) Add language requiring the Director of the California Department of Social Services (CDSS) to, no later than July 1, 2022, seek any federal approvals necessary to implement certain provisions of this bill, as specified.
- 3) Delete language that prohibits a county child welfare, probation, or tribal placing agency from filing a petition, as specified by the provisions of this bill for an undocumented NMD, and instead, add language prohibiting these entities from filing a petition for an NMD if the NMD is categorically ineligible for federal Aid to Families with Dependent Children-Foster Care (AFDC-FC) benefits.
- 4) Delete language that would have permitted a county child welfare, probation, or tribal placing agency to re-determine a NMD's eligibility for federal financial participation after the court has resumed dependency jurisdiction or transition jurisdiction, as specified.
- 5) Delete the requirement that, on or before July 1, 2022, CDSS develop and disseminate guidance to county child welfare, probation, and tribal agencies on recommended procedures to follow in order to transition a youth to the extended foster care (EFC) program, as specified.
- 6) Add provisions from AB 592 (Friedman) and AB 808 (Stone) both of the current legislative session, to avoid chaptering out conflicts.
- 7) Make technical and conforming changes.

## COMMENTS

*Extended foster care:* In 2010, AB 12 (Beall), Chapter 559, Statutes of 2010, extended foster care benefits for certain eligible youth until the age of 21. Prior to the expansion of foster care benefits, youth "aged out" of the CWS system at 18 years old and were required to navigate the challenges of young adulthood, including obtaining education, stable housing, and employment, without the support of the CWS system. In recognition of the difficulties faced by these youth, extended foster care provides eligible youth between the ages of 18 and 21, known as NMDs, with the services and supports they need to experience independent living in supervised living environments. Extended foster care also enables youth to obtain educational and employment training to better prepare them to transition to adulthood and self-sufficiency.

Some youth choose to participate in EFC immediately following their 18th birthday, while others leave the foster care system after attaining 18 years of age, but choose to re-enter care at some point before their 21st birthday under what is called a "voluntary re-entry agreement." A voluntary re-entry agreement is a written agreement between the youth and the county welfare or probation department, or a tribal placing entity, that documents the youth's desire and willingness to re-enter foster care and be placed in a supervised setting under the placement and care responsibility of the placing agency, among other requirements. When EFC was initially implemented, it was anticipated that only 61% of eligible youth would participate in the program and by the third year, only 31% of eligible youth were expected to continue to participate. Actual participation rates of eligible youth are between 90-95%.

*Aid to Families with Dependent Children-Foster Care:* Foster care payments for eligible youth are provided through either state or federal AFDC-FC. In order to be eligible for federal AFDC-FC, the home from which the child was removed must meet Aid for Dependent Children

(AFDC) eligibility criteria from 1996 for the month in which a dependency petition is filed with the juvenile court, or in any of the six months prior to the month in which the petition is filed. In 1996, the income limit for a family of three to qualify for AFDC was \$723. Eligibility for federal AFDC-FC is determined at the time a child is removed from their parent's custody and eligibility is not re-determined once the youth is in foster care. Because many youth are ineligible for federal AFDC-FC, California created state AFDC-FC, which provides funding to foster children who are placed with non-relative foster parents.

Because eligibility for federal AFDC-FC is determined at the time a child is removed from their parents' custody, youth who immediately transition from foster care to EFC do not undergo federal AFDC-FC eligibility re-determination, as there is no disruption in their foster care status that would warrant re-determination. However, current law permits nonminors who are eligible for EFC to undergo re-determination for federal AFDC-FC if they re-enter the dependency system through a voluntary re-entry agreement. It is worth noting that the services and supports provided to youth in EFC do not differ regardless of whether a youth's foster care payments are state- or federally-funded.

### **According to the Author**

"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 Kin-GAP with the intent to move the money freed up by the federal match to support the extended foster care 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 extended foster care. To complicate matters further, there has been disagreement between the state and counties post-2011 Realignment over what costs should be borne in extended foster care by the state.

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

### **Arguments in Support**

The California State Association of Counties writes, "[This bill] would provide some needed fiscal relief for counties for the [EFC] program. It would do so by allowing counties to establish Title IV-E eligibility for many youth who do not currently meet Title IV-E eligibility as the enter EFC. While states are allowed to re-determine eligibility for Title IV-E at the time that a youth enters EFC, California's program is not currently structured to allow this to occur. This bill would fix that oversight and allow counties to gain a measure of fiscal relief for the EFC program that can free up funding to reinvest in the child welfare services system. All of this would be done without any disruption in services or supports to these youth."

**Arguments in Opposition**

None on file

**FISCAL COMMENTS**

According to the Senate Appropriations Committee on August 16, 2021, pursuant to Senate Rule 28.8, this bill would result in negligible state costs

**VOTES:****ASM HUMAN SERVICES: 8-0-0****YES:** Calderon, Davies, Arambula, Choi, Gipson, Stone, Villapudua, Ward**ASM APPROPRIATIONS: 16-0-0****YES:** Lorena Gonzalez, Bigelow, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas**ASSEMBLY FLOOR: 79-0-0****YES:** Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon**SENATE FLOOR: 39-0-1****YES:** Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk**ABS, ABST OR NV:** Stern**UPDATED**

VERSION: August 30, 2021

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