
SENATE COMMITTEE ON HUMAN SERVICES

Senator Hurtado, Chair
2021 - 2022 Regular

Bill No: AB 640
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Consultant: Marisa Shea
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Fiscal: Yes

Subject: Extended foster care: eligibility redetermination

SUMMARY

This bill permits a county to petition the juvenile court on behalf of nonminor dependents (NMDs) to terminate dependency or transition jurisdiction over MMD and immediately re-establish jurisdiction in order to establish the NMD's eligibility for federal financial participation. It also requires the Judicial Council, by September 1, 2022, to develop and implement rules, and develop and adopt appropriate forms, as necessary, to facilitate the petition to terminate jurisdiction and immediately re-establish jurisdiction over these NMDs. This bill also expands the definition of a voluntary re-entry agreement to include an agreement between an 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.

ABSTRACT

Existing Law:

- 1) Establishes a state and local system of child welfare services, including foster care, for children who have been adjudged by the court to be at risk of abuse and neglect or to have been abused or neglected, as specified. (*Welfare and Institutions Code Section [WIC] 202*)
- 2) States that the purpose of foster care law is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused; neglected; or, exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm. (*WIC 300.2*)
- 3) Provides for EFC funding for youth until age 21, as well as adopts other changes to conform to the federal Fostering Connections to Success Act. (*WIC 241.1, 303, 366.3, 388, 391, 450, 11400, 11402, 11403*)
- 4) Defines "nonminor dependent" as a current or former foster youth who is between 18 and 21 years old, in foster care under the responsibility of the county welfare department,

county probation department, or Indian Tribe, and participating in a transitional independent living plan, as specified. (*WIC 11400(v)*)

- 5) Defines “nonminor former dependent or ward” as either: a) A nonminor who turned 18 while subject to an order for foster care placement, and for whom dependency, delinquency, or transition jurisdiction has been terminated, and who is still under the general jurisdiction of the court; or, b) A nonminor who is at least 18 years old and, while a minor, was a dependent child or ward of the juvenile court when the guardianship was established, as specified, and the juvenile court dependency or wardship was dismissed following the establishment of the guardianship. (*WIC 11400(aa)*)
- 6) Requires Aid to Families with Dependent Children-Foster Care (AFDC-FC) to be provided to any child under 18 years of age, and to any NMD who meets one of the following criteria, including, but not limited to: the child has been relinquished for purposes of adoption; the child has been removed from the physical custody of their parent as a result of a voluntary placement agreement, or the child has been placed in foster care under the federal Indian Child Welfare Act, among others, as specified. (*WIC 11401*)
- 7) Deems a child as eligible for federal AFDC-FC if the child has been removed from the custody of their parent, relative, or guardian as a result of a voluntary placement agreement or a judicial determination that continuance in the home would be contrary to the child’s welfare and that, if the child was placed in foster care, reasonable efforts were made to prevent or eliminate the need for removal of the child from their home and to make it possible for the child to return to their home, or the child is an NMD who satisfies certain criteria and agrees to the placement and care responsibility of the placing agency by signing a voluntary re-entry agreement, and certain conditions apply, as specified. (*WIC 11401(g)*)
- 8) Defines “Transitional independent living case plan” (TILCP) as a child’s case plan submitted for the last review hearing held before the child reaches 18 years of age or the NMD’s case plan, updated every six months, that describes the goals and objectives of how the NMD will make progress in transition to living independently and assume incremental responsibility for adult decision making, the collaborative efforts between the NMD and the social worker, probation officer, or Indian tribal placing entity and the supportive services as described in the transitional independent living plan (TILP) to ensure active and meaningful participation in one or more of the certain eligibility criteria, the NMD’s appropriate supervised placement setting, and the NMD’s permanent plan for transition to living independently, as specified. (*WIC 11400(y)*)
- 9) Defines “voluntary re-entry agreement” as a written voluntary agreement between a former dependent child or ward or a former NMD who has had juvenile court jurisdiction terminated, and the county welfare or probation department or tribal placing entity that documents the NMD’s desire and willingness to comply with certain requirements, as specified. (*WIC 11400(z)*)
- 10) Defines “eligible for financial participation” as meaning that the payment is consistent with a federally approved state plan authorizing federal financial participation an AFDC-FC payment. Further, prohibits, until and unless federal financial participation is

obtained, no payment of AFDC-FC 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. (*WIC 11402.1*)

- 11) Defines “transitional independent living plan” as a written description of the programs and services that will be held for the child, consistent with the child’s best interests, to prepare for the transition from foster care to successful adulthood, and, in addition, whether the youth has an in-progress application pending for Supplemental Security Income benefits or for special immigrant juvenile status or other applicable application for legal residence and an active dependency case is required for that application. Further, enumerates the requirements of a TILP. (*WIC 16501.1(g)(16)*)

This Bill:

- 1) Provides that, for any NMD who attained 18 years of age while subject to an order for foster care placement and who has not yet attained 21 years of age, and who was ineligible for federal financial participation prior to turning 18, the county child welfare, probation, or tribal placing agency may, on behalf of, and with the consent of, the NMD, petition the court to dismiss its dependency or transition jurisdiction and immediately resume dependency or transition jurisdiction in order to establish the NMD’s eligibility for federal financial participation.
- 2) Requires the petition to dismiss dependency or transition jurisdiction and for immediate re-entry to dependency or transition jurisdiction to include notice to the NMD and the NMD’s attorney.
- 3) Requires, 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 permits the court to grant a petition without a hearing.
- 4) Specifies 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) Prohibits, if the NMD for whom a petition has been filed for termination of jurisdiction and immediate reentry 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) Prohibits, if the NMD for whom a petition has been filed for termination of jurisdiction and immediate reentry 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 requires, 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) Requires the county child welfare, probation, or tribal placing agency to ensure that a NMD does not experience a break in services or supports before, during, or after the filing or granting of a petition for termination of jurisdiction and immediate reentry.
- 8) Prohibits the county child welfare, probation, or tribal placing agency from filing a petition for termination of jurisdiction and immediate reentry for an undocumented NMD.
- 9) Requires the Judicial Council, by September 1, 2022, to develop and implement standards and develop and adopt the appropriate forms as necessary for implementation of the petition for termination of jurisdiction and immediate reentry.
- 10) Requires the director of CDSS to seek any necessary federal approvals for implementation of the provisions of this bill by July 1, 2022.
- 11) Expands 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 for termination of jurisdiction and immediate reentry.
- 12) Includes chaptering amendments, including additional changes to Section 11400 of the Welfare and Institutions Code proposed by AB 592 (Friedman, 2021), which will be operative only if this bill and AB 592 are enacted and this bill is enacted last.

FISCAL IMPACT

According to a May 12, 2021 analysis prepared by the Assembly Appropriations Committee, this bill would have the following fiscal impact:

- General Fund savings of an unknown amount, but potentially in the low tens of millions of dollars annually, from re-determining a foster youth’s eligibility for federal financial participation upon entering extended foster care. By allowing a court to terminate jurisdiction over a youth and immediately re-establish jurisdiction, a county can re-establish a youth’s eligibility for Aid to Families with Dependent Children (AFDC)-Foster Care (FC) when the youth enters extended foster care. To the extent additional youth qualify for federal funding under this process, AFDC-FC funds could replace state funds in paying for extended foster care services for these youth. The net amount of federal funding to the state is unknown and will depend on the number of counties that petition the court on behalf of potentially eligible foster youth and the number of successful eligibility re-determinations.
- Minor and absorbable costs to the Judicial Council to develop standards and adopt appropriate forms, if the bill’s June 1, 2022, deadline is moved to September 1, 2022. The Judicial Council indicates it would be unable to meet this requirement by the June 1, 2022.

- Minor and absorbable costs to CDSS to provide guidance to county agencies.

BACKGROUND AND DISCUSSION

Purpose of the Bill:

According to the author, “When Extended Foster Care was established as an option through the federal Fostering Connections to Success Act it provided a 50 percent 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.”

Child Welfare Services (CWS)

The CWS system is an essential component of the state’s safety net. Social workers in each county who receive reports of abuse or neglect, investigate and resolve those reports. When a case is substantiated, a family is either provided with services to ensure a child’s well-being and avoid court involvement, or a child is removed and placed into foster care. In 2019, the state’s child welfare agencies received 477,614 reports of abuse or neglect. Of these, 69,652 reports contained allegations that were substantiated and 28,646 children were removed from their homes and placed into foster care via the CWS system. As of October 1, 2020, there were 60,045 children in California’s CWS system.

Extended Foster Care (EFC)

The intent of EFC is to bridge the gap between the intensive supervision of foster care and unsupervised adulthood by maintaining a safety net of support while providing the youth independence and additional educational or work opportunities. EFC was prompted by the recognition that many youth were unable to successfully transition from foster care or group care to adulthood without additional guidance and assistance. EFC is intended to enable youth to obtain educational and employment opportunities and training to better prepare them for the transition to adulthood and self-sufficiency.

The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (*P.L. 110-351*) enabled states to expand the definition of a foster “child,” by creating extended care for youth up to age 21. The federal law allows foster youth to remain in care past age 18 if the youth is in foster care under the responsibility of the county welfare or probation department on their 18th birthday and are meeting one of the following participation criteria: are enrolled in high

school or a high school equivalency credential; enrolled in college, community college, or vocational education; employed for at least 80 hours a month; participating in other qualifying activities or programs designed to remove barriers to employment; or medically exempt from meeting any of the other participation criteria.

In 2010, California enacted AB 12 (*Beall, Chapter 559, Statutes of 2010*), which permits foster youth to remain in EFC until age 21, under the same criteria as the federal statute. At the six month hearing prior to a youth turning 18 years old, the youth's social worker or probation officer must submit a Transitional Independent Living Case Plan (TILCP), which describes the goals and objectives of how the NMD will make progress in the transition to living independently and will ultimately assume responsibility for themselves as an independent adult. The TILCP includes a TILP that ensures the youth is actively and meaningfully participating in one or more of the five federal participation criteria listed above, as well as the NMD's supervised placement setting, and the youth's permanent plan for transitioning to independent living.

Additionally, existing law allows qualifying nonminors who are former foster youth under the age of 21 to petition the court for re-entry into foster care to participate in EFC, as provided. This allows youth who chose not to participate in EFC immediately following their 18th birthday with the opportunity 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, which documents the youth's desire and willingness to re-enter foster care and to be placed in a supervised setting under the placement and care responsibility of the placing agency, among other requirements.

Youth participation in EFC has exceeded expectation. When it was initially implemented, it was anticipated that only 61 percent of eligible youth would participate in the program and by the third year, only 31 percent of eligible youth were expected to continue to participate. Actual participation rates of eligible youth are between 90-95 percent. As of January 1, 2021 there were an estimated 8,732 youth participating in EFC in California.

Aid to Families with Dependent Children-Foster Care (AFDC-FC)

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 Child (AFDC) eligibility criteria as established in 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 not re-determined once the youth is in foster care. Due to many youth not meeting the 1996 eligibility criteria for federal AFDC-FC, California created state AFDC-FC, which provides funding to foster children who are placed with non-relative foster parents. According to CDSS's internet website, state AFDC-FC payments are a blend of state and county funds, while federal AFDC-FC payments are a blend of federal, state, and county funds. According to the County Welfare Directors Association of California, the average monthly payment for NMDs varies by placement type. Approximately 70 percent of NMDs are in a Supervised Independent Living Placement, which is paid at the basic

foster care rate of \$1,000 a month, and 30 percent are in other types of foster care arrangements that average \$2,800 per a month. Whether a youth is eligible for certain services or supports is not tied to whether the youth qualifies for state or federal AFDC-FC, the only thing that differs is the funding source.

Since 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, because 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, nonminors who choose to exit care and voluntarily re-enter care sometime between their 18th and 21st birthday undergo a federal AFDC-FC eligibility determination based on their household's status at the time of re-entry. Most NMDs who voluntarily re-enter EFC were in long-term foster care, meaning the parental rights of their biological parents were terminated while the NMD was in care. This means that a nonminor who may have been previously ineligible for federal AFDC-FC may qualify for federal AFDC-FC as an NMD, because eligibility of their household of one is more likely to meet the 1996 AFDC income thresholds for federal AFDC-FC eligibility.

This bill is intended to facilitate a NMD's potential eligibility for federal AFDC-FC by allowing a county to petition the juvenile court on behalf of a NMD, with the NMD's consent, to terminate dependency or transition jurisdiction over the youth and immediately re-establish dependency or transition jurisdiction. As in print, this bill requires the county child welfare, probation, or tribal placing agency to ensure that a NMD does not experience a break in services or supports before, during, or after the filing or granting of a petition to terminate jurisdiction and immediately re-establish jurisdiction. This is intended simply to be a tool to make the NMD eligible for a re-determination of their eligibility for federal AFDC-FC payments, and not intended to have any other impact on their supports, services, or TILP.

2011 Realignment

In 2011, AB 118 (*Committee on Budget, Chapter 40, Statutes of 2011*) realigned the responsibility to fund various criminal justice, mental health, and social services programs to local governments, often referred to as Realignment or 2011 Realignment. AB 118 established the "Local Revenue Fund 2011" to receive revenues generated from various sources, including dedicated sales and use tax and Vehicle License Fee revenues. As a result of 2011 realignment, counties are responsible for providing 100 percent of the nonfederal costs for a significant portion of the child welfare system.

Related/Prior Legislation:

AB 403 (*Stone, Chapter 773, Statutes of 2015*) implemented Continuum of Care Reform recommendations to better serve children and youth in California's child welfare services system.

AB 212 (*Beall, Chapter 459, Statutes of 2011*) made various clarifying and substantive changes to the California Fostering Connections to Success Act in order to ensure proper implementation

on January 1, 2012, and other changes to existing state law in order to comply with various provisions of federal law.

AB 118 (Committee on Budget, Chapter 40, Statutes of 2011) established the “Local Revenue Fund 2011” and established the fund account structure for public safety realignment, which includes foster care, child welfare services, and adoptions.

AB 12 (Beall, Chapter 559, Statutes of 2010) the California Fostering Connections to Success Act, provides an option for continued jurisdiction of federally-eligible NMDs or former dependents of the juvenile court who are between the ages of 18 and 21, as specified.

COMMENTS

According to the County Welfare Directors Association of California (CWDA), there are approximately 4,000 NMDs in EFC who are not currently eligible for federally-funded AFDC-FC payments. It is thought that many of these NMDs would qualify for federally-funded AFDC-FC payments if their eligibility was re-determined. Due to federal law, a NMD who opts immediately into EFC on their 18th birthday does not have their AFDC-FC eligibility re-determined, despite the fact that many of them are no longer connected to their biological parents who the initial determination was based on. This bill creates a process where counties can petition, with the NMD’s consent, to have the court’s jurisdiction over the NMD terminated and immediately re-established. This allows counties to re-determine the NMD’s eligibility for federal AFDC-FC, potentially allowing counties and the states to draw down additional federal funding for EFC.

As written, this bill is not intended to any break in the provision of services, supports, or care to NMDs. It is envisioned to provide a seamless termination and re-entry for NMDs, with no actual lapse in care. Additionally, switching from state funded to federally funded AFDC-FC payments would not change the services or supports a NMD is eligible for, but instead just changes the source for some of the funding.

PRIOR VOTES

Assembly Floor:	79 - 0
Assembly Appropriations Committee:	16 - 0
Assembly Human Services Committee:	8 - 0

POSITIONS

Support:

- County Welfare Directors Association of California (CWDA) (Sponsor)
- Alliance for Children's Rights
- County of Santa Clara
- National Association of Social Workers, California Chapter

Oppose:
None received.

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