

Date of Hearing: April 13, 2021

ASSEMBLY COMMITTEE ON JUDICIARY

Mark Stone, Chair

AB 829 (Levine) – As Amended April 5, 2021

SUBJECT: FOSTER CHILDREN: IMMIGRATION COUNSEL

KEY ISSUE: SHOULD COUNTIES MAKE BEST EFFORTS TO PROVIDE IMMIGRATION LEGAL SERVICES TO UNDOCUMENTED FOSTER YOUTH, WHO MAY THEREBY NORMALIZE THEIR IMMIGRATION STATUS AND BE IN A BETTER POSITION TO MAKE A SUCCESSFUL TRANSITION TO ADULTHOOD?

SYNOPSIS

This important measure, sponsored by Legal Services for Children, would help ensure that undocumented immigrant youth who have been abused, neglected, or abandoned by a parent have the opportunity to qualify for federal Special Immigrant Juvenile Status (SIJS) and then apply to be lawful permanent residents of the United States. Minor and nonminor dependents in the child welfare system should, by definition, qualify for SIJS since they would not be in the child welfare system but for abuse or neglect. Obtaining legal status is a critical component of a foster youth's successful transition to adulthood. Legal status opens up numerous opportunities for education and employment, while lack of legal status places youth at risk of deportation. This bill will help ensure that these foster youth have their immigration status reviewed in four ways.

First, the bill requires every county in California to make best efforts to provide immigration legal services to undocumented minors and nonminor dependents in foster care who are under the jurisdiction of the juvenile court.

Second, this bill requires a child welfare placing agency, upon learning that a dependent youth is an undocumented immigrant, to let that youth's attorney know their immigration status, which should ensure that the juvenile court is also made aware of this status.

Third, this bill requires each county to develop a process to track both (i) the number of undocumented minors and nonminor dependents in foster care who are under the jurisdiction of the juvenile court, and (ii) the number of undocumented minors and nonminor dependents in foster care who have been provided access to immigration legal services. Counties would have to report this data annually to the Department of Social Services (DSS) in deidentified form, and DSS, in turn, must publish an annual report containing this data on its website.

Finally, counties would report to DSS their processes for ensuring immigration legal services for all undocumented minors and nonminor dependents in foster care who are under the jurisdiction of the juvenile court. If these processes prove inadequate to provide all eligible individuals with such services, counties would also specify the resources they require to fulfill the unmet need.

This bill is supported by numerous children's advocacy and immigrant rights organizations. It has no opposition. The bill passed out of the Assembly Human Services Committee last week on a 7-0-1 vote.

SUMMARY: Requires counties to make best efforts to provide immigration legal services to undocumented youth in foster care so that they can obtain legal immigration status. Also requires counties to track and report data regarding undocumented foster youth to the Department of Social Services (DSS). Specifically, **this bill:**

- 1) Provides that each county must make best efforts to provide access to immigration legal services for undocumented minors and nonminor dependents in foster care who are under the jurisdiction of the juvenile court.
- 2) Mandates a child welfare placing agency, as soon as it becomes aware that a minor or nonminor dependent is an undocumented immigrant, to notify the minor or nonminor dependent's attorney of this fact. Electronic or telephonic notice must be provided to the attorney within 72 hours of learning of the minor or nonminor dependent's immigration status.
- 3) Requires each county, on or before June 1, 2022, to develop a process to track both of the following:
 - a) The number of undocumented minors and nonminor dependents in foster care who are under the jurisdiction of the juvenile court.
 - b) The number of undocumented minors and nonminor dependents in foster care who have been provided access to immigration legal services.
- 4) Requires each county, on or before January 1, 2023 and annually thereafter, to report the data under 3) to DSS in deidentified form. Requires DSS to publish a report on its internet website, on or before July 1, 2023 and annually thereafter, containing this information.
- 5) Requires each county, on or before June 1, 2022, to report to DSS its internal process for providing access to immigration legal services for undocumented minors and nonminor dependents in foster care who are under the jurisdiction of the juvenile court. Further requires that, if this process is inadequate to ensure that immigration legal services are provided for all undocumented minors and nonminor dependents, then the county must also specify in this report the additional resources it requires to fulfill the unmet need.
- 6) Makes legislative findings and declarations related to circumstances facing undocumented youth who may emancipate from foster care without an application for Special Immigrant Juvenile Status. States legislative intent to create accountability in ensuring that foster youth who emancipate from foster care have received all immigration relief to which they are entitled, as well as legislative intent to identify a source of funding to enable counties to provide immigration counsel to all children in foster care.

EXISTING LAW:

- 1) Establishes that the juvenile court has jurisdiction over children who are subject to abuse or neglect. (Welfare and Institutions Code Section 300. All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.)

- 2) Establishes a state and local system of child welfare services, including foster care, for children who have been determined by a juvenile court to have suffered, or be at substantial risk of suffering, abuse or neglect. (Section 200 *et seq.*; Section 16500 *et seq.*)
- 3) Defines “nonminor dependent” to mean a foster child, as defined under applicable federal law, who meets all of the following criteria:
 - a) They are a current dependent child or ward of the juvenile court, or are a nonminor under the transition jurisdiction of the juvenile court.
 - b) They have reached the age of 18 while under an order of foster care placement by the juvenile court, and are not more than 21 years of age.
 - c) They are in foster care under the placement and care responsibility of the county welfare department, county probation department, or an Indian tribe, consortium of tribes, or tribal organization that entered into a specified agreement with DSS.
 - d) They have a transitional independent living case plan pursuant to applicable federal law. (Section 11400 (v).)
- 4) Provides the court may have within its jurisdiction any nonminor dependent up to age 21. Provides that a nonminor dependent shall retain all of their legal decision-making authority as an adult, except as specified. (Section 303.)
- 5) Requires the court, if a child or nonminor dependent is not represented by counsel in a juvenile dependency proceeding, to appoint counsel for the child or nonminor dependent, unless the court finds that the child or nonminor dependent would not benefit from the appointment of counsel. Requires that the dependent’s counsel be charged in general with the representation of the child’s interests. Requires the counsel to investigate the interests of the child beyond the scope of the juvenile proceeding, and report to the court other interests of the child that may need to be protected by the initiation of other administrative or judicial proceedings. (Section 317 (c), (e).)
- 6) Defines, under federal law, a “special immigrant juvenile” as a person under 21 who is declared a dependent by a juvenile court or committed to the custody of a state agency or a court-appointed individual, whose reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law, and whose return to their country of nationality or last habitual residence is not in the juvenile’s best interest. Allows such person to obtain special immigrant juvenile status (SIJS) and, based on that, apply for a visa for lawful permanent residency. (8 U.S.C. Section 1101 (a)(27)(J); 8 C.F.R. Section 204.11 (2021).)
- 7) Provides that a superior court, including a juvenile, probate, or family court department or division of the superior court, has jurisdiction to make judicial determinations regarding the custody and care of juveniles within the meaning of the federal Immigration and Nationality Act. Requires the superior court to make an order containing the necessary findings regarding SIJS pursuant to federal law, if there is evidence to support those findings. (Code of Civil Procedure Section 155.)

- 8) Defines “unaccompanied undocumented minor” in state law to mean the same as “unaccompanied alien children” in federal law, which defines an unaccompanied alien child to mean a child who has no lawful immigration status in the United States, had not yet reached 18 years of age, and with respect to whom either there is no legal parent or guardian in the United States, or no parent or legal guardian in the United States is available to provide care and physical custody. (Section 13300 (c); 6 U.S.C. Section 279 (g)(2).)
- 9) Requires DSS, subject to the availability of funding, to contract with qualified non-profit legal services organizations to provide legal services, including culturally and linguistically appropriate services, to unaccompanied undocumented minors, as defined, who are transferred to the care and custody of the federal Office of Refugee Resettlement and who are present in the state. (Sections 13300, 13301.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: Undocumented immigrant youth who have been abused, neglected, or abandoned by a parent may qualify for federal Special Immigrant Juvenile Status and apply to be lawful permanent residents of the United States. Minor and nonminor dependents in the child welfare system should, by definition, qualify for SIJS since they would not be in the child welfare system but for abuse or neglect. Obtaining legal status is a critical component of a foster youth’s successful transition to adulthood, as legal status opens up numerous opportunities for education and employment, while lack of legal status places youth at risk of deportation.

Despite the importance of legal immigration status for this especially-vulnerable population, Legal Services for Children, the bill’s sponsor, points out a critical gap in California law:

Current law requires that for a child who is 16 years of age or older and nonminor dependents, the [transitional independent living] case plan include information about any pending applications for SIJS and other forms of immigration relief. (Welfare and Institutions Code Section 16501.1 (g)(16)(A)(ii).) Additionally, prior to closing a case, the agency must provide a nonminor dependent with proof of citizenship or legal residency. (Welfare and Institutions Code Section 391 (e)(2)(G).) However, there is no mechanism to identify dependent children and nonminor dependents who are undocumented and ensure that they receive legal assistance necessary to obtain immigration relief.

This bill provides four mechanisms by which these foster youth may be identified and their immigration status reviewed.

Two provisions of the bill should be of immediate benefit to undocumented foster youth:

- Each county in California is required to make best efforts to provide immigration legal services to undocumented minors and nonminor dependents in foster care who are under the jurisdiction of the juvenile court.
- A child welfare placing agency, upon learning that a dependent youth is an undocumented immigrant, must let that youth’s attorney know their status, likely ensuring that the juvenile court is also made aware of the youth’s immigration status.

Two provisions of the bill should help bolster long-term efforts to provide immigration counsel to these foster youth:

- Each county must develop a process to track both the number of undocumented minors and nonminor dependents in foster care who are under the jurisdiction of the juvenile court, and the number of undocumented minors and nonminor dependents in foster care who have been provided access to immigration legal services. Counties must report this data annually to the Department of Social Services (DSS) in deidentified form, and DSS, in turn, must publish on its website an annual report containing this data.
- Counties have to report to DSS their processes for ensuring immigration legal services for all undocumented minors and nonminor dependents in foster care who are under the jurisdiction of the juvenile court. If these processes are inadequate for providing all eligible individuals with such services, counties have to also specify the resources they require to respond to the unmet need.

It is hoped that these provisions will lead to more undocumented foster youth receiving needed legal assistance to obtain legal status and become successful adults.

Author's statement. The author writes:

California is responsible for creating a foundation that will allow children in foster care to transition into adulthood with the best possibility for success. This includes equipping children with all the necessary resources specific to their individual immigration legal service needs. Ensuring undocumented children are able to acquire their green card while they qualify in the system for legal representation is key to putting them on track for security in adulthood.

Special Immigrant Juvenile Status. “Special Immigrant Juvenile Status” is a federal immigration classification that may help undocumented, vulnerable children and youth remain in the United States. Under the Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, any unmarried person under age 21 who has been abused, neglected or abandoned by a parent may seek classification as a SIJS and then immediately apply for lawful permanent resident status, also known as a “green card.” While a juvenile (or the juvenile's representative) must eventually apply to the United States Citizenship and Immigration Service (USCIS) for SIJS status, the first step requires the juvenile to obtain requisite findings from a state court (a family, juvenile, or probate court). To be eligible for SIJS, a state court must first find that:

1. The child is a dependent of a juvenile court or committed to the custody of a state agency or a court-appointed individual;
2. Reunification with one or both of the child's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law; and
3. Return to the child's country of nationality or last habitual residence is not in the child's best interest. (8 U.S.C. Section 1101 (a)(27)(J).)

The first finding originally only applied to children under the direct jurisdiction of the juvenile court, thus limiting eligibility for SIJS. This was expanded in 2008 to include children with a court-appointed custodian, thus allowing the required findings to be made on behalf of children with guardianships established by a probate court and custodial arrangements established by a family court. This significantly expanded the number of immigrant children who are eligible for

SIJS. Once a state court makes the requisite findings, the child may apply to the U.S. Citizenship and Immigration Services for SIJS. (8 U.S.C. Section 1153 (b)(4).)

Department of Social Services' existing grant program to fund legal services for unaccompanied, undocumented minors does not serve the population that this bill targets.

DSS is authorized, as the result of SB 873 (Committee on Budget and Fiscal Review, Chap. 685, Stats. 2014), to award funding to qualified nonprofit legal services organizations for the provision of services to unaccompanied, undocumented children. Services include culturally and linguistically appropriate legal services for state court proceedings, federal immigration proceedings, and any related appeals, provided by attorneys, paralegals, interpreters, and other support staff. Legal representation is offered for various immigration statuses, including Special Immigrant Juvenile Status, asylum, certain visas, and other remedies. However, this grant program does not directly fund immigration legal services for the population that this bill would serve: undocumented minors and nonminor dependents in foster care who are under the jurisdiction of the juvenile court. This omission is regrettable because almost all undocumented children in the foster care system likely qualify for SIJS.

Core requirement of this bill: county-by-county provision of immigration legal services to undocumented foster youth. The core requirement of this bill is statutory language which provides:

A county shall make its best efforts to provide an undocumented minor or nonminor dependent in foster care under the jurisdiction of the juvenile court with access to immigration legal services.

This provision places responsibility on counties to ensure that undocumented foster youth are able to secure SIJS status, which makes sense given that child welfare agencies are county-level agencies.

This bill will also help provide the child's attorney and the court with information about the child's immigration status. Access to immigration legal assistance for children in foster care placement begins with knowledge of the need for assistance. Without that knowledge, children may not get the help they need. This bill seeks to provide that knowledge in two ways. First, the bill requires the child welfare agency placing the child, as soon as the agency becomes aware that the dependent is an undocumented immigrant, to notify the dependent's attorney of that fact. To ensure that the information is received timely, the bill specifically requires that electronic or telephonic notice be provided to the child's attorney within 72 hours of learning of their immigration status. Second, under existing Welfare and Institutions Code Section 317 (e)(4), a dependent minor's or nonminor's attorney is required to investigate the interests of the child beyond the scope of the juvenile proceeding, and report to the court other interests of the child that may need to be protected by the initiation of other administrative or judicial proceedings, which clearly would include the need to secure legal immigration status. Taken together, this should ensure that both the child's attorney and the court are aware of the child's immigration needs and should, hopefully, help provide needed resources for the child to seek SIJS or other legal status during their youth.

This bill will help fill in information gaps regarding county-by-county availability of immigration services for foster youth. A nonprofit immigration attorney, while testifying in support of the bill at the Assembly Human Services Committee, stated that there are counties in California where undocumented foster youth fail to receive immigration legal services, and

therefore exit the foster system without obtaining SIJS. From this Committee's investigation into the matter, it appears that there is no hard evidence as to which counties provide immigration counsel to foster youth, and, in counties where youth do receive such services, the number who are so served and the number who are not.

This bill will fill this information gap by requiring each county, no later than June 1, 2022, to develop a process to track both the number of undocumented minors and nonminor dependents in foster care who are under the jurisdiction of the juvenile court, and the number of undocumented minors and nonminor dependents in foster care who have been provided access to immigration legal services. Counties must report this data to DSS in deidentified form no later than January 1, 2023 and annually thereafter; DSS, in turn, must publish a report on its internet website containing this data no later than July 1, 2023, and every year thereafter.

The bill will also require each county, no later than June 1, 2022, to report to DSS its internal process for providing immigration legal services for all undocumented minors and nonminor dependents in foster care who are under the jurisdiction of the juvenile court. If these processes prove inadequate to provide all eligible individuals with such services, counties must also specify the resources they require to respond to the unmet need. The latter reporting requirement can help shape future legislation and a possible appropriation meant to ensure that all eligible youth obtain immigration legal services regardless of their county of residence.

ARGUMENTS IN SUPPORT: Children's Law Center of California explains the importance of this bill's reporting component:

By ensuring counties track the number of undocumented youth in their jurisdiction and report their processes to do so, we can ensure youth have the best chance of being connected to immigration assistance and the process by which children are connected to immigration services. This data collection will also enable the State to better understand where existing gaps in services and resources are to better assist these youth.

REGISTERED SUPPORT / OPPOSITION:

Support

Legal Services for Children (sponsor)
Alliance for Children's Rights
CASA of Los Angeles
Children Now
Children's Law Center of California
Disability Rights California
John Burton Advocates for Youth
Kids in Need of Defense (KIND)

Opposition

None on file

Analysis Prepared by: Jith Meganathan / JUD. / (916) 319-2334