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AB-829 Foster children: immigration counsel and guardianship. (2021-2022)

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Assembly Bill No. 829

CHAPTER 528

An act to amend Section 2104.1 of the Probate Code, and to amend Section 16010.6 of, and to add Section 13310 to, the Welfare and Institutions Code, relating to foster children.

[Approved by Governor October 05, 2021. Filed with Secretary of State October 05, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 829, Levine. Foster children: immigration counsel and guardianship.

Existing law requires the State Department of Social Services, subject to the availability of funding, to contract with qualified nonprofit legal services organizations to provide legal 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 this state.

This bill would require a county to 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, as specified.

Existing law requires, as soon as a placing agency makes a decision with respect to a placement or a change in placement of a dependent child, but not later than the close of the following business day, the placing agency to notify the child's attorney and provide to the child's attorney information regarding the child's address, telephone number, and caregiver.

If a placing agency becomes aware that a dependent child or nonminor dependent is an undocumented immigrant, this bill would require the placing agency to notify the dependent child's or nonminor dependent's attorney of that fact. The bill would require electronic or telephonic notice to be provided to the attorney within 5 business days of learning of the minor or nonminor dependent's immigration status.

Existing law, until January 1, 2022, authorizes a nonprofit charitable corporation that is not incorporated in this state to be appointed as a guardian of a minor in connection with a petition regarding special immigrant juvenile status, if the nonprofit charitable organization meets specified requirements including that it is licensed by this state to provide care for minors and is contracted by a specific federal office to provide care and custody for the minor.

This bill would remove the repeal date, thereby extending this provision indefinitely.

By imposing additional duties on counties and county agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Almost all undocumented children in foster care qualify for immigration relief, but that relief is difficult to obtain without an attorney, especially in the current political climate.

(2) Children who emancipate from foster care without submitting an application for special juvenile immigrant status are unable to apply later and will subsequently be unable to work and to successfully transition to adulthood.

(3) Section 391 of the Welfare and Institutions Code requires that, before terminating dependency jurisdiction over a nonminor, the county welfare department ensure that, when applicable, a nonminor is provided with proof of citizenship or legal residency.

(4) Subdivision (e) of Section 317 of the Welfare and Institutions Code requires a minor's counsel to inform the court of other legal needs outside of the juvenile court proceedings.

(b) It is the intent of the Legislature in enacting this act to create accountability in ensuring that foster children emancipating from foster care have received all immigration relief to which they are entitled. It is further the intent of the Legislature to identify a source of funding to enable counties to provide immigration counsel to all children in foster care.

SEC. 2. Section 2104.1 of the Probate Code is amended to read:

2104.1. A nonprofit charitable corporation not incorporated in this state may be appointed as the guardian of a minor if all of the following requirements are met:

(a) The articles of incorporation specifically authorize the nonprofit charitable corporation to accept appointments as a guardian.

(b) The nonprofit charitable corporation is contracted by the federal Department of Health and Human Services, Office of Refugee Resettlement, or its successor federal government entity, to provide care and custody of the minor.

(c) The petition for guardianship is filed in connection with a petition to make the necessary findings regarding special immigrant juvenile status pursuant to subdivision (b) of Section 155 of the Code of Civil Procedure.

(d) The nonprofit charitable corporation is licensed by this state to provide care for minors.

(e) The nonprofit charitable corporation complies with all of the requirements of Section 2104, except for paragraphs (1) and (2) of subdivision (a) of Section 2104.

SEC. 3. Section 13310 is added to the Welfare and Institutions Code, to read:

13310. 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 access may be provided by the child welfare agency through outside legal service providers.

SEC. 4. Section 16010.6 of the Welfare and Institutions Code is amended to read:

16010.6. (a) As soon as a placing agency makes a decision with respect to a placement or a change in placement of a dependent child, but not later than the close of the following business day, the placing agency shall notify the child's attorney and provide to the child's attorney information regarding the child's address, telephone number, and caregiver.

(b) (1) A placing agency shall not make a placement or a change in placement of a child outside the United States before a judicial finding that the placement is in the best interest of the child, except as required by federal law or treaty.

(2) The placing agency shall carry the burden of proof and show, by clear and convincing evidence, that placement outside the United States is in the best interest of the child.

(3) In determining the best interest of the child, the court shall consider, but not be limited to, the following factors:

(A) Placement with a relative.

(B) Placement of siblings in the same home.

(C) Amount and nature of any contact between the child and the potential guardian or caretaker.

(D) Physical and medical needs of the dependent child.

(E) Psychological and emotional needs of the dependent child.

(F) Social, cultural, and educational needs of the dependent child.

(G) Specific desires of a dependent child who is 12 years of age or older.

(4) If the court finds that a placement outside the United States is, by clear and convincing evidence, in the best interest of the child, the court may issue an order authorizing the placing agency to make a placement outside the United States. A child subject to this subdivision shall not leave the United States before the issuance of the order described in this paragraph.

(5) For purposes of this subdivision, "outside the United States" shall not include the lands of a federally recognized American Indian tribe or Alaskan Natives.

(6) This section does not apply to the placement of a dependent child with a parent.

(c) Absent exigent circumstances, as soon as a placing agency becomes aware of the need for a change in placement of a dependent child or ward that will result in the separation of siblings currently placed together, the placing agency shall notify the child's attorney and the child's siblings' attorney of this proposed separation no less than 10 calendar days before the planned change of placement so that the attorneys may investigate the circumstances of the proposed separation. If the placing agency first becomes aware, by written notification from a foster family agency, group home, or other foster care provider, of the need for a change in placement for a dependent child or ward that will result in the separation of siblings currently placed together, and that the child or children shall be removed within seven days, notice shall be provided to the attorneys by the end of the next business day after the receipt of notice from the provider. In an emergency, the placing agency shall provide notice as soon as possible, but no later than the close of the first business day following the change of placement. This notification shall be sufficient notice for the purposes of subdivision (a).

(d) When the required notice is given before a change in placement, the notice shall include information regarding the child's address, telephone number, and caregiver or any one or more of these items of information to the extent that this information is known at the time that the placing agency provides notice to the child's attorney. When the required notice is given after the change in placement, notice shall include information regarding the child's address, telephone number, and caregiver.

(e) The Judicial Council shall adopt a rule of court directing the attorney for a child for whom a dependency petition has been filed, upon receipt from the agency responsible for placing the child of the name, address, and telephone number of the child's caregiver, to timely provide the attorney's contact information to the caregiver and, if the child is 10 years of age or older, to the child. This rule does not preclude an attorney from giving contact information to a child who is younger than 10 years of age.

(f) When the placing agency becomes aware that a dependent child or a nonminor dependent is an undocumented immigrant, the placing agency shall notify the dependent child's or nonminor dependent's attorney that the dependent child or nonminor dependent is an undocumented immigrant. Electronic or telephonic notice shall be provided to the attorney within five business days of learning of the dependent child's or nonminor dependent's immigration status.

SEC. 5. To the extent that this act has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII B of the California Constitution.