

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1140 (Robert Rivas)
Version: February 18, 2021
Hearing Date: July 13, 2021
Fiscal: No
Urgency: No
ME

SUBJECT

Foster care: rights

DIGEST

This bill provides that specified duties of the California State Department of Social Services (DSS) and the Office of the State Foster Care Ombudsperson (Ombudsperson) include duties to children who are in state-licensed foster facilities and homes in the custody of the Office of Refugee Resettlement (ORR) of the federal Department of Health and Human Services (HHS).

EXECUTIVE SUMMARY

There have been concerning reports about the treatment of immigrant unaccompanied undocumented minors in state-licensed settings.¹ In an effort to protect immigrant children, this bill makes it clear that unaccompanied immigrant children in state-licensed settings are entitled to all their personal rights, including all the rights set forth in the Foster Youth Bill of Rights, like other foster children, and affirms the Foster Care Ombudsperson's jurisdiction and responsibility to engage in oversight of unaccompanied immigrant children held in ORR custody in state licensed facilities in California.

Currently unaccompanied undocumented minors who are detained are placed in the custody of ORR. These children are required by the federal Flores Settlement

¹ See Disability Rights California, *The Detention of Immigrant Children with Disabilities in California: A Snapshot*, July 2019, available at <https://www.disabilityrightsca.org/system/files/file-attachments/DRC-ORR-Report.pdf> (as of July 7, 2021); Shantel Meek, Kelly Edyburn, and Camille Smith, *Federal Policy and State Licensing Standards for the Operation of Residential Facilities Housing Unaccompanied Migrant Children*, Children's Equity Project, May 2021, available at <https://childandfamilysuccess.asu.edu/sites/default/files/2021-04/CEP-ORR-report-041721.pdf> (as of July 7, 2021).

Agreement² to be held in state-licensed facilities. These facilities exist all over California and currently hold over 2,000 children per year. Unfortunately, despite the protections outlined for these children as a result of the Flores settlement, they fall between the cracks of protective state laws because they do not explicitly have someone to whom they can turn to investigate and resolve problems regarding their treatment or services. Unaccompanied undocumented minors are receiving disparate care from other California children in state-licensed settings. To address this problem, AB 1140 provides that undocumented unaccompanied minors in state licensed homes or facilities are entitled to all their personal rights, including all the rights set forth in the Foster Youth Bill of Rights, just like any other foster child. The bill also affirms the Ombudsperson's jurisdiction, as well as responsibility, to engage in oversight of immigrant children held in ORR custody in state-licensed facilities in California. This bill matches the rights of children in ORR custody placed in California state-licensed facilities to what is provided under state law. In order to ensure the health and safety of children in California, this bill clarifies the personal rights of unaccompanied undocumented children and requires the Ombudsperson to engage in oversight of the state-licensed facilities where these children are placed, just as the Ombudsperson is required to engage in oversight of the state-licensed facilities where other foster children are placed.

This bill is sponsored by Kids in Need of Defense, Immigrant Defense Advocates, Youth Law Center, National Center for Youth Law, Vera Institute of Justice, Legal Services for Children, and the Immigrant Legal Resource Center. There are dozens of additional organizations supporting the bill and no known opposition. This bill passed out of the Senate Human Services Committee by a vote of 5 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes licensing and regulatory oversight by DSS over, among other places, residential care facilities and licensed foster family homes for foster children. (Health and Safety Code § 1500 *et seq.*)
- 2) Requires that a care provider that provides foster care for children to provide each school age child and the child's authorized representative with an age and developmentally appropriate orientation that includes an explanation of the rights of the child, and addresses the child's questions and concerns. (Health & Safety Code § 1530.91 (a).)
- 3) Requires any facility licensed to provide foster care for six or more children to post a listing of a foster child's rights as provided in 6) below. Requires the Office of the State Foster Care Ombudsperson to provide the posters and include its telephone number. (Health & Safety Code § 1530.91 (b).)

² The Flores settlement stems from *Flores v. Barr* (C.D. Cal.), No. 2:85-cv-04544, filed July 11, 1985.

- 4) Requires that DSS ensure that a facility licensed, and a home certified or approved by a foster family agency to provide foster care children and nonminor dependents in foster care their personal rights, including, but not limited to, the rights as provided in 6) below. Requires DSS to adopt regulations to implement and enforce 1-3). (Health & Safety Code § 1530.91 (c).)
- 5) Establishes the jurisdiction of the juvenile court, which is authorized to adjudge children to be dependents of the court for specified reasons, including, but not limited to, extreme abuse or neglect. (Welfare and Institutions Code (WIC) § 300.)
- 6) Establishes a Foster Youth Bill of Rights, which include, but are not limited to, the rights to the following:
 - a) Receive adequate and healthy food, adequate clothing, and, for youth in group homes, an allowance;
 - b) Receive medical, dental, vision, and mental health services;
 - c) Be free of the administration of medication or chemical substances, unless authorized by a physician;
 - d) Visit and contact brothers and sisters, unless prohibited by court order;
 - e) Attend religious services and activities of choice;
 - f) Maintain an emancipation bank account and manage personal income, unless prohibited by the case plan;
 - g) Attend school and participate in extracurricular, cultural, and personal enrichment activities with minimal disruptions to school attendance and educational stability;
 - h) Attend Independent Living Program classes and activities;
 - i) Review the child's own case plan and plan for permanent placement, if the youth is 12 years of age or older and in a permanent placement, and receive information about the child's out-of-home placement and case plan, including being told of changes to the plan;
 - j) Have access to services, placement, care, treatment, and benefits, and not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status;
 - k) Be placed in out-of-home care according to their gender identity regardless of the gender or sex listed in their court or child welfare records;
 - l) Have caregivers and child welfare personnel who have received instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care; and

- m) Have access to age-appropriate, medically accurate information about reproductive health care, the prevention of unplanned pregnancy, and the prevention and treatment of sexually transmitted infections at 12 years of age or older. (WIC § 16001.9.)
- 7) Establishes the Ombudsperson as an autonomous entity within DSS for the purpose of providing children in foster care with a means to resolve issues related to their care, placement, or services. (WIC § 16161.)
- 8) Requires that the Ombudsperson, among other things, do the following:
 - a) Disseminate information and provide training and technical assistance to foster youth, social workers, probation officers, tribes' child welfare agencies, and others on the rights of children and youth in foster care, reasonable and prudent parent standards, and the services provided by the Ombudsperson;
 - b) Investigate and attempt to resolve complaints made by or on behalf of children placed in foster care, related to their care, placement, or services;
 - c) Decide, in its discretion, whether to investigate a complaint, or refer complaints to another agency for investigation; and
 - d) Update the complainant on the progress of the investigation and notify the complainant of the final outcome. (WIC § 16164.)
- 9) Requires out-of-home placement of a foster youth to be based upon selection of a safe setting that is the least restrictive family setting that promotes normal childhood experiences and the most appropriate setting that meets the youth's individual needs. The highest priority of placement is with: a) relatives; and b) nonrelative extended family member. (WIC § 16501.1 (d)(1).)
- 10) Mandates that, at least once every six months, at the time of a regularly scheduled visit with the youth, and at each placement change, a social worker or probation officer shall inform the youth, the caregiver, and the child and family team, of the youth's rights, provide a written copy of the rights to the youth in an age and developmentally appropriate manner, and document in the case plan that the youth has been informed of the rights and been provided with a written copy of their rights. (WIC § 16501.1 (g)(4).)
- 11) 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. (WIC Section 13300 (c); 6 U.S.C. § 279 (g)(2).)

This bill:

- 1) Clarifies that the requirement that DSS ensure that licensed facilities and homes, certified or approved by foster family agencies to provide foster care, as specified, accord children and nonminor dependents their personal rights, includes residential facilities and foster homes for children in the custody of ORR.
- 2) Clarifies that the requirement that the Office of the Ombudsperson investigate and attempt to resolve complaints, made by children in foster care, related to their care, placement, or services includes complaints by children in state-licensed residential facilities and foster homes in the custody of ORR.

COMMENTS

1. Stated need for the bill

According to the author:

Recent reports demonstrate that California needs to strengthen its protection for unaccompanied children, as detailed in Disability Rights California's 2019 report summarizing findings from monitoring ORR shelters in California. The Children's Equity Project's 2021 report scored California 13 out of 22 points in performance across intersecting federal ORR policy and state licensing standards. Part of the difficulty in ensuring that unaccompanied children in ORR custody in state-licensed settings are being fully protected is that the nesting of federal law, Flores, ORR policies, and state licensing standards can be quite complex, and coordination between systems appears minimal.

A recent investigation by the U.S. Government Accountability Office (2020) found that ORR lacks clear instructions for grantees on when and how to report state licensing violations to ORR and has been out of compliance with their own policies to conduct regular monitoring site visits, provide prompt correct actions to facilities, and conduct audits related to sexual abuse and harassment prevention. In this GAO report, nearly all state licensing agencies reported that they do not regularly share state monitoring findings with ORR, and all reported that ORR does not share its monitoring findings with them.

Most unaccompanied immigrant children are therefore receiving disparate care from other California children in state-licensed settings. California should play a stronger role in ensuring positive experiences for unaccompanied children while they are in federal custody and are in the state-licensed shelter system. To address this problem, AB 1140 would clarify the Foster Care Ombudsperson's jurisdiction, as well as responsibility, to engage in oversight of children held in immigration custody in state-licensed facilities in California.

According to a coalition of dozens of organizations who support the bill:

Each year, thousands of unaccompanied children fleeing violence, war, and poverty enter the United States and are temporarily taken into federal custody in state-licensed childcare facilities. Unaccompanied children are held temporarily in the federal custody of the Office of Refugee Resettlement (ORR) while awaiting family reunification or an appropriate long-term foster care placement. More unaccompanied children are present in California than any other state in the country. On average, approximately 2,500 unaccompanied children are held in ORR custody annually in California-licensed facilities. The federal government as of September 2020 mapped at least 20 grantee facilities in California, of which 14 were actively serving unaccompanied children. Since the start of Fiscal Year 2014, approximately 39,000 unaccompanied children were released from ORR custody to sponsors and family members in California.

The federal government is required to provide care for unaccompanied children in state-licensed childcare settings. Unaccompanied children have a right to the same level of care and services as any other child in California licensed childcare settings. Negative or harmful experiences in such settings can affect a child's ability to heal trauma, reunite with their families, and integrate successfully into California communities. Yet unaccompanied children often do not have the ability to exercise their rights and ensure their safety and well-being in these facilities in the same way as other Californian children because they lack access to resources and advocates with both the training and authority to assist them. A 2019 Disability Rights California report resulting from monitoring California ORR facilities underscored how unaccompanied immigrant children in these state-licensed facilities were being underserved compared to other children in California. The report found meager and cursory educational assessments and inadequate mental health and medical evaluations and care, all falling short of California state standards.

The need to protect unaccompanied children in federal custody is more urgent than ever. As of March 14, 2021, there were extremely high numbers of approximately 4,200 unaccompanied children in US Customs and Border Protection custody--a 31% jump from just a week earlier. These children need a guarantee that their time in state-licensed ORR facilities will be appropriately monitored and have access to an independent third party with whom to file their complaints and hear their concerns.

In order to address these shortcomings, AB 1140 would clarify the role of the California Office of the Foster Care Ombudsperson with respect to this population. The California Office of the Foster Care Ombudsperson is an independent, impartial, and confidential agency trained to investigate

complaints about the treatment of youth in state-licensed childcare settings, and to educate youth and licensed programs about their rights and responsibilities under California law. The Ombudsperson could be crucial in safeguarding the rights and best interests of unaccompanied children in federal custody when state-licensed programs have failed to meet their obligations.

2. Oversight for foster children through the Ombudsperson and the Foster Youth Bill of Rights

The Office of the Ombudsperson was established in 1998.³ The Ombudsperson was created to provide youth in foster care with a means of resolving issues related to their placement, care, or supervision in foster care. The Ombudsperson operates a 24-hour toll-free help line, receives inquiries and complaints, provides referrals to service agencies, investigates complaints, and assists foster youth in working to resolve problems. The Ombudsperson must disseminate information to foster children about their rights and about the Ombudsperson's services. The Ombudsperson must also investigate and resolve complaints made by foster youth regarding their care, placement, and services. The Ombudsperson must, every year, compile data regarding contacts, investigations, referrals, and the number of unresolved complaints.

The Foster Youth Bill of Rights was established in 2001⁴ to and codify the rights of foster children. The Foster Youth Bill of Rights required foster care providers and group home operators to provide foster youth with an appropriate orientation to the foster care system that includes an explanation of foster youth rights and answers to their questions and concerns. The Foster Youth Bill of Rights was expanded through the years and includes the right not to be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. The statute was further updated to make clear that foster children have a right to receive medical, dental, vision, and health care services and to participate in their case plan. Foster youth also have the right to gender affirming health care, gender affirming behavioral health services, and case plans that consider their gender identity.

In an effort to protect immigrant children, this bill makes it clear that unaccompanied immigrant children in state-licensed settings are entitled to all their personal rights, including all the rights set forth in the Foster Youth Bill of Rights, like other foster children, and affirms the Ombudsperson's jurisdiction and responsibility to engage in oversight of unaccompanied immigrant children held in ORR custody in state licensed facilities in California.

³ SB 933 (Thompson), Ch. 311, Stats. 1998.

⁴ AB 899 (Liu), Ch. 683, Stats. 2001.

SUPPORT

Immigrant Defense Advocates (co-sponsor)
Kids in Need of Defense (co-sponsor)
Immigrant Legal Resource Center (co-sponsor)
Legal Services for Children (co-sponsor)
National Center for Youth Law (co-sponsor)
Vera Institute of Justice (co-sponsor)
Youth Law Center (co-sponsor)
Advancing Justice - Asian Law Caucus
African Advocacy Network
Al Otro Lado
Alliance for Children's Rights
American Immigration Lawyers Association - San Diego Chapter
Anne and Henry Zarrow School of Social Work
API Legal Outreach
Bay Area Health and Legal Partnerships for Immigrant Youth and Families
Bet Tzedek Legal Services
Burma Refugee Families & Newcomers
California Alliance of Child and Family Services
California Chapter 1, American Academy of Pediatrics
California Collaborative for Immigrant Justice
California Immigrant Policy Center
California Rural Legal Assistance Foundation
Californians Together
Center for Gender & Refugee Studies
Center of Excellence for Immigrant Child Health and Wellbeing, UCSF Benioff
Children's Hospitals
Central American Resource Center - CARCEN SF
Central American Resource Center - CARCEN- of California
Centro Legal de La Raza
Children Now
Children's Law Center of California
Church World Service
Coalition to Abolish Slavery & Trafficking
Communities United for Restorative Youth Justice
Community Action Board of Santa Cruz County
Community Action Marin
Community Legal Aid SoCal
Community Legal Services in East Palo Alto
Courage California
Disability Rights California
Dolores Street Community Services
Dreamer Fund

East Bay Refugee and Immigrant Forum
East Bay Sanctuary Covenant
Education and Leadership Foundation
Ella Baker Center for Human Rights
Empowering Pacific Islander Communities
Esperanza Immigrant Rights Project, Catholic Charities of Los Angeles INC.
Food Empowerment Project
Friends Committee on Legislation of California
Haywood Burns Institute
Immigrant Defenders Law Center
Immigrant Legal Defense
Immigrant Legal Services of the Central Coast
Indivisible Sacramento
Initiate Justice
International Rescue Committee
Jewish Family Service of San Diego
John Burton Advocates for Youth
Justice and Diversity Center of the Bar Association of San Francisco
La Raza Centro Legal
La Raza Community Resource Center
Law Foundation of Silicon Valley
Long Beach Immigrant Rights Coalition
Los Angeles Center for Law and Justice
Los Angeles County Office of Education
Lutheran Office of Public Policy - California
National Association of Social Workers - California
National Council of Jewish Women CA
National Immigration Law Center
Norcal Resist
Open Immigration Legal Services
Orange County Equality Coalition
Pangea Legal Services
Pomona Economic Opportunity Center
Project Lifeline
Public Counsel
Restaurant Opportunities Centers of California
San Francisco Immigrant Legal Defense Collaborative
San Joaquin College of Law - New American Legal Clinic
Santa Cruz Barrios Unidos
Santa Cruz Welcoming Network
Secure Justice
Sierra College Undocumented Student Center
Soccer Without Borders
Social Justice Collaborative

Street Level Health Project
Teach
Thai Community Development Center
The Children's Partnership
UCSF Health and Human Rights Initiative
United We Dream
UCSF Immigration & Deportation Defense Clinic
USC Gould School of Law Immigration Clinic
Verity
Vidas Legal Services and Committee
Women's Foundation California
Young Women's Freedom Center

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 317 (Patterson, 2021) requires the Secretary of the California Health and Human Services Agency, instead of the Director of the CDSS as required by current law, to appoint the Foster Care Ombudsperson, as provided. Further requires the Ombudsperson to be independent of and not directly or indirectly controlled, supervised or directed by the CDSS director. That bill will be heard in this Committee on the same day as this bill.

Prior Legislation:

AB 1988 (Patterson, 2020) would have required the Governor to appoint the Foster Care Ombudsperson, subject to confirmation by the Senate. AB 1988 was set to be heard in the Assembly Human Services Committee but the hearing was postponed by the committee due to COVID-19 restrictions.

AB 163 (Garcia and Rubio, 2019) would have required CDSS to create a facilities liaison position within the immigration services unit to assist undocumented immigrant youth in state-licensed residential facilities and programs. AB 163 was held on suspense in the Senate Appropriations Committee.

SB 873 (Senate Committee on Budget and Fiscal Review, Ch. 685, Stats. 2014) required CDSS, subject to the availability of funding, to contract with qualified nonprofit legal services organizations to provide legal services, including culturally and linguistically appropriate services, to UUMs, as defined, who are transferred to the care and custody of the federal ORR and who are present in the state. The bill also enacted a provision in the Code of Civil Procedure to strengthen protections for immigrant children by

making it clear that all California courts have jurisdiction to make Special Immigrant Juvenile Status findings.

PRIOR VOTES:

Senate Human Services Committee (Ayes 5, Noes 0)

Assembly Floor (Ayes 78, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)

Assembly Human Services Committee (Ayes 8, Noes 0)
