Children's Advocacy Institute

University of San Diego School of Law
5998 Alcalá Park / San Diego, CA 92110
(619) 260-4806 / (619) 260-4753 (Fax)

717 K Street, Suite 509
Sacramento, CA 95814
(916) 444-3875 / (916) 444-6611 (Fax)

Reply to: □ San Diego □ Sacramento

www.caichildlaw.org

March 25, 2011

The Honorable Ricardo Lara
Assemblymember, 50th District
State Capitol
Room 2179
Sacramento, CA 95814

Re: Support and co-sponsorship of AB 1110 (Lara)

Dear Assemblymember Lara:

The Children's Advocacy Institute at the University of San Diego School of Law, which works to improve the well being of children in California through regulatory, legislative, and judicial advocacy, is pleased to support and co-sponsor your AB 1110, a bill that modestly seeks to ensure that foster children who are forced out of foster care to make it on their own on or around their 18th birthdays, are properly screened for federal benefits and not excluded from being informed about the disposition of those benefits should they be eligible.

As the grim data reveal, foster youth are desperate for any resources when they are forced out of the system while still teenaged:

- Although most foster youth express a desire to attend college, only about 3% earn four-year degrees.
- By age 24, less than half of foster care alumni are employed — and they earn less than half, on average, than their peers with no history of foster care.
- By age 24, 37% of foster care alumni experienced homelessness or had "couch surfed."
- Many experience chronic health problems as a result of the abuse and neglect they endured. Up to 85% of foster youth experience mental health issues.
- Identity theft is a growing problem among foster youth — a problem that many do not discover until they exit care. When applying for a college loan, an apartment, a car loan, etc., they discover that their credit has been destroyed.

In painful contrast, American parents give a median of almost $50,000 in assistance to each of their own children after age 18 to help them achieve self-sufficiency. And the help parents give their young adult children goes far beyond money: we advise them on major decisions, we guard their important documents in our homes, and we often continue to provide homes for them as they work to establish themselves in our economy.

Former foster youth receive none of this assistance from us, their default parents. Even if a former foster youth is fortunate enough to receive all available financial help, it totals less than one-fifth of the median amount per child that the average private parent provides, and it is skewed to the miniscule 2–3 % of foster kids who are able to earn a higher education degree. They may never have had a job, taken a bus, driven a car, or the like when they are forced to live on their own.

The conclusion is obvious: compared to what parents do for their children, we abandon foster children.

Thus, former foster youth – uniformly abused and neglected when they enter the system and then afflicted by the system itself, which the Little Hoover Commission has described as a "heartless limbo" -- have wildly disproportionate levels of unemployment, arrest and suicide. Over one-third of them experience homelessness. And, the public costs of our failure to nurture in the first place are enormous and often last a lifetime. Up to thirty percent will end-up in prison within two years of "emancipating."

Children in foster care are currently eligible for benefits from the Old Age, Survivors and Disability Insurance Benefits program (OASDI) and/or the Supplemental Security Income for Aged, Blind and Disabled (SSI) program. Generally a child entitled to such benefits is required to have a representative payee appointed by the Social Security Administration (SSA) to manage his or her funds, and to ensure that the funds are used to serve the best interests of the child beneficiary. A duly appointed representative payee serves in a fiduciary capacity to the beneficiary.

For youth who receive SSI while in foster care, the county is obligated under current law to:

(1) apply to be appointed representative payee only when no other party is available to serve;

(2) establish a no-cost, interest bearing maintenance account for each child for whom the department serves as a payee;

(3) establish procedures for disbursing money from the maintenance account including providing the balance to the youth when he/she is released from care;

(4) ensure the SSI benefits are expended for the use and benefit of the child and for a purpose determined by the county to be in the child's best interest;

(5) establish and maintain dedicated accounts for past-due monthly benefits that exceed six times the maximum monthly benefit payable.

(WIC § 13754)

In addition, when a foster youth who is receiving SSI approaches his/her 18th birthday, the county must:

(1) provide information to the youth regarding the federal requirement that the youth establish continuing disability as an adult, if necessary, to receive SSI after age 18;

(2) provide information to the youth regarding the process for becoming his/her own payee or designating another appropriate person as the payee;

(3) assist youth in fulfilling these requirements.

(WIC § 13753).

For youth who are not eligible for SSI while in foster care (usually because they receive federal foster care benefits in excess of what they would receive through SSI), California law also requires that the county child welfare agency screen the youth for SSI eligibility at age 16.5 and make an application for SSI on behalf of all youth screened as likely eligible for the benefits. The goal is that SSI benefits be in place at the point that the youth exits foster care. (WIC § 13757)

All these requirements make sense when one contemplates how desperately former foster youth need financial resources when they are pushed from the system.

Notwithstanding the requirement in current law that foster children be screened for their eligibility, current law does not also require any report be made to the court in order to ensure that the SSI screening has in fact occurred or to track the status of the SSI application. As a result, both the court and the youth are often unaware of what the status of the application is, or even whether it has been filed. The availability of such resources could have a dramatic influence on decisions regarding transition planning of the youth.

Moreover, for most child beneficiaries, SSA appoints the child's parent or guardian to serve as representative payee. For foster children, that is often not possible or appropriate. In such cases, SSA is required to identify and select the representative payee who will best serve the child's interests, using preference lists contained in federal regulations. Although the lists provide guidelines that are meant to be flexible, foster care agencies are ranked last in order of preference.

In most instances in California, the assignment of the responsible child welfare agency as representative payee for a foster child is practically automatic -- without counsel for the child ever being notified. This happens despite the fact that California law specifies that a county should be the payee only when no other appropriate party is able to serve as the youth's representative payee.

Instead, for most foster youth, SSA provides notice solely to the child's legal guardian or legal representative — and this is often the same state or county agency that is applying to be the child's representative payee in the first place. Current federal law does not require the foster care agency to notify the child, the child's attorney or even the juvenile court (which is ultimately responsible for the child's well being) that it has applied to be or has been appointed as a foster child's representative payee.

Without notification, the child, the child's attorney, and the juvenile court have no opportunity to notify SSA that there might be a parent, relative, family friend, or other person in the child's life who might be a more appropriate choice. Indeed, and amazingly, many youth leave foster care unaware that they had even been receiving benefits— and for those receiving SSI, they leave care unprepared for the cumbersome redetermination process that awaits them.

Although *Washington State Dep't of Social and Health Services v. Keffeler* held that a foster care agency serving as a foster child's representative payee did not violate the Social Security Act's anti-attachment provision when using the child's benefits to reimburse itself for the cost of the child beneficiary's foster care placement, the *Keffeler* decision did not excuse foster care agencies serving as representative payees from their affirmative fiduciary duties to ensure that such use best serves the unique interests of each child beneficiary.

Even so, once the county is appointed as the payee, the county uses that child's social security benefits without providing any accounting to the minor or minor's attorney specifying how the funds are being spent.

Your bill laudably, and in service to the barest minimum fairness to the foster child, does the following:

(1) Requires at both the foster child's termination hearing and at hearings after they turn 16 years of age, that the social worker provide information to the court about the status of the SSI screening and the SSI application to the court;

(2) Requires that when a county applies to be a representative payee for a foster child, the county should simply notify counsel for the foster child. Such modest notice will ensure that all parties – the child especially -- can be part of the discussion as to who should serve as the payee and how these benefits should be used to serve the best interests of the child as required by both state and federal law; and

(3) Requires when a county is appointed as the payee, the county should provide an annual accounting to the minor's attorney specifying how the funds were spent over the previous year.

Your proposed legislation (AB 1110) does not try to limit the county's ability to use SSI to offset the cost of providing foster care. Your bill simply ensures that the foster child be involved and informed both about their eligibility for such benefits and how their own benefits are spent.

Sincerely,

Ed Howard,
Senior Counsel