

September 3, 2024

The Honorable Gavin Newsom  
Governor of the State of California  
State Capitol, Suite 1173  
Sacramento, CA 95814

**RE: AB 2935 (MAIENSCHIN) – CO-SPONSORSHIP AND REQUEST FOR SIGNATURE**

Dear Governor Newsom:

The Children's Advocacy Institute at the University of San Diego School of Law, which has sought to advance the well-being of California's children through legal education, advocacy, and litigation for over 30 years, is honored to co-sponsor AB 2935 (Maienschein) and respectfully asks for you sign this critical measure for our state's foster youth.

Painstakingly negotiated and amended with representatives of the credit reporting agencies to ensure that its reforms align with their existing legal obligations and practices, this zero-cost measure will place California at the forefront of protecting foster children from the devastating consequences of identity theft, a crime that tragically and disproportionately afflicts them.

**The Foster Youth We Raise Begin Their Adult Lives at Terrible Risk of Poverty,  
Homelessness, and Death.**

Framing this bill is the fact that we owe a moral and legal responsibility to foster children that is incomparable to any other group of children. These are children who, by blunt force of law, we have separated from their parents, brothers, sisters, aunts, uncles, grandparents, and friends, to be raised by us through the taxpayer-funded programs we enact, pay for, and oversee. Having separated these children from many of their support systems, knowing they are uniformly traumatized, we then force them to fend for themselves at either 18 or 21 years of age — an absurdly young age at which to navigate some of life's greatest challenges alone.

Our legal and moral obligation to these children is of the highest order. They are our children, literally.

And we fail them:

- Around 4,000 young people “age out” of the California foster care system each year. Most of these youth lack family or other support networks to assist them, and many have not yet acquired the life skills necessary to become self-sufficient. According to one study, between 31 and 46% of former foster youth had been homeless at least once by the age

of 26.”<sup>1</sup> As the most recent Chapin Hall survey of California’s transition-age youth concluded:

Among all [survey] participants, more than a quarter of youth reported being homeless (i.e., slept in a homeless shelter or in a place where people were not meant to sleep, because they had no place to stay) for at least one night since their last interview. ... Among those who had been homeless, close to three-fifths were homeless for more than 30 days in total since their last interview.<sup>2</sup>

- Foster youth are already at enormous risk of suicide. When they become homeless, the risk dramatically increases, as suicide is the leading cause of death among youth who experience homelessness. Among homeless youth, more than 70% report suicidal thoughts, and approximately half have attempted suicide.<sup>3</sup>
- In California, 11% of 19-year-old foster children and 21% of 21-year-olds report having had a child in the past two years.<sup>4</sup>
- According to data from a longitudinal study of former foster youth, only 55% of those in the study reported current employment of more than 10 hours per week.<sup>5</sup>
- With far less familial support than other young adults, former foster youth must contend by themselves with meeting basic needs; difficulties with unemployment and underemployment; finding safe, affordable housing; avoiding hunger and homelessness; and for some youth, parenting a child.<sup>6</sup>

**Among Our Failings? (i) Allowing Foster Children to Become Victims of Identity Theft and Then (ii) Leave Our Care Without Fixing Their Credit.**

As the Department of Social Services correctly observes, “minors should not have a credit report.”<sup>7</sup> Shockingly, however, while exact numbers are hard to ascertain, it is estimated that

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<sup>1</sup> <https://pubmed.ncbi.nlm.nih.gov/24148065/>.

<sup>2</sup> Findings from the California Youth Transitions to Adulthood Study (CalYOUTH): Conditions of Youth at Age 23 [https://www.chapinhall.org/wp-content/uploads/CY\\_YT\\_RE0518\\_1.pdf](https://www.chapinhall.org/wp-content/uploads/CY_YT_RE0518_1.pdf).

<sup>3</sup> <https://preventsuicide.lacoe.edu/high-risk/homeless/>.

<sup>4</sup> <https://datacenter.aecf.org/data/tables/10867-youth-transitioning-out-of-foster-care-had-a-child-in-the-past-two-years?loc=6&loct=2#detailed/2/6/false/1698,1697/6259,6260,6261,6262/21127,21128>).

<sup>5</sup> [https://www.chapinhall.org/wp-content/uploads/CY\\_YT\\_RE1020.pdf](https://www.chapinhall.org/wp-content/uploads/CY_YT_RE1020.pdf).

<sup>6</sup> Cunningham, Miranda & Diversi, Marcelo. (2013). Aging out: Youths’ perspectives on foster care and the transition to independence. *Qualitative Social Work*. 12. 587-602. 10.1177/1473325012445833.; Radey, Melissa & Schelbe, Lisa & Mcwey, Lenore & Holtrop, Kendal & Canto, Angela. (2016). “It’s really overwhelming”: Parent and service provider perspectives of parents aging out of foster care. *Children and Youth Services Review*. 67. 10.1016/j.childyouth.2016.05.013.; Jennifer M. Geiger, Megan Hayes Piel, Angelique Day, Lisa Schelbe, (2018)

A descriptive analysis of programs serving foster care alumni in higher education: Challenges and opportunities, *Children and Youth Services Review*, Volume 85.

<sup>7</sup> <https://cdss.ca.gov/lettersnotices/entres/getinfo/acl/2014/14-23.pdf>.

between half<sup>8</sup> and 15%<sup>9</sup> of all of California's abused and neglected foster children become victims of identity theft while in our care.

Foster youth are at particularly high risk of identity theft and credit problems due to the large number of people with access to their personal information, including Social Security numbers.<sup>10</sup> This includes the parents from whom the child was removed, as well as caseworkers, foster parents, and group home providers.<sup>11</sup> Each time a foster child changes placement, additional individuals gain access to their private information. More than a third of California's foster children in foster care for two years have experienced three or more placement changes,<sup>12</sup> significantly increasing the child's vulnerability to identity theft.

Foster youth who "age out" of foster care with their credit in shambles often unfairly bear the responsibility for crippling debt, including mortgages, utility bills, medical bills, tax debt, and credit card debt, through no fault of their own.<sup>13</sup> They may also face legal problems resulting from the fraudulent acts of those who have stolen their identity. Most of these youth at 18 or 21 years of age are unqualified and incapable of navigating the credit reporting world on their own.

Worse, credit reports are routinely checked for housing,<sup>14</sup> employment,<sup>15</sup> and private education loans.<sup>16</sup> The persistent theft of foster child identities means that foster children under our care will — on top of all of their many other challenges — have a far harder time obtaining housing, gainful employment, and education when they are on their own between the ages of 18 to 21 than children who were not raised under our care.

As one foster care identity theft survivor has stated:

I lived with that foster family for about 2½ years off and on. At 17, I started working with the intention of saving up to move out and access extended foster care here in California. It was then that I learned in my Independent Living Skills

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<sup>8</sup> <https://www.lawfoundation.org/news/2019/8/5/addressing-foster-youth-identity-theft>.

<sup>9</sup> [https://www.idtheftcenter.org/wp-content/uploads/2019/01/ITRC\\_dec18\\_white-pages-foster-youth\\_FINAL\\_web.pdf](https://www.idtheftcenter.org/wp-content/uploads/2019/01/ITRC_dec18_white-pages-foster-youth_FINAL_web.pdf).

<sup>10</sup> Identity Theft Resource Center, The Impact of Identity Theft on Foster Youth (2018), [https://www.idtheftcenter.org/wp-content/uploads/2019/01/ITRC\\_dec18\\_white-pages-foster-youth\\_FINAL\\_web.pdf](https://www.idtheftcenter.org/wp-content/uploads/2019/01/ITRC_dec18_white-pages-foster-youth_FINAL_web.pdf).

<sup>11</sup> Annie E. Casey Foundation, Youth and Credit: Protecting the Credit of Youth in Foster Care (2013), <https://assets.aecf.org/m/resourcedoc/AECF-YouthAndCredit-2013.pdf>.

<sup>12</sup> California Child Welfare Indicators Project, <https://ccwip.berkeley.edu/childwelfare/reports/PlacementStability/MTMG/r/fcp/>

<sup>13</sup> Identity Theft Resource Center, The Impact of Identity Theft on Foster Youth (2018), [https://www.idtheftcenter.org/wp-content/uploads/2019/01/ITRC\\_dec18\\_white-pages-foster-youth\\_FINAL\\_web.pdf](https://www.idtheftcenter.org/wp-content/uploads/2019/01/ITRC_dec18_white-pages-foster-youth_FINAL_web.pdf). See also California Office of Privacy Protection, A Better Start: Clearing Up Credit Records for California Foster Youth (2011), [https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/foster\\_youth\\_credit\\_records.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/foster_youth_credit_records.pdf).

<sup>14</sup> Civil Code section 1950.6(a). SB 267 (Eggman), enacted last year, made it unlawful to check credit reports under some circumstances for those receiving government subsidized housing but not for others. "Nationally only about one in four income-eligible households receive [housing vouchers] and waiting lists of several years are common." Assembly Judiciary Committee analysis of SB 267 (Eggman), p. 4.

<sup>15</sup> Labor Code section 1024.5 prohibits the use of credit reports in employment for many but not all jobs.

<sup>16</sup> <https://www.bankrate.com/loans/student-loans/credit-score-for-student-loans/>.

program, that I needed a decent credit score to rent an apartment. I decided I should check my credit report on Credit Karma.

*It came as a shock when I learned that I actually had a credit score, even though I wasn't supposed to.*

I discovered I had a credit score of 319.

I was completely stunned and confused. How was this even possible? I'm not even 18 years old, and I have never had a credit card or loan, nor could I even legally obtain one.

I soon learned on the Credit Karma website that I had delinquent accounts opened in my name for the past 16 to 17 years. Not sure how a newborn can apply for a credit card, but it was the reality of my situation.

I discovered my biological father had been opening "guardian" accounts using my social security number, as well as getting business loans under my name...

And yet, matters got worse.

Shortly after I turned 18, my foster parents handed me all my belongings in trash bags, in the middle of the night and told me to leave. A story many youth in the system know all too well. I had no car and nowhere to go.... It wasn't until after I signed a lease that I was told my placement didn't meet the requirements of Extended Foster Care, and I was forced to leave the system. With that being said, my lease also fell through, only worsening my already terrible credit score, and costing me my entire savings account.<sup>17</sup>

Current federal and state law isn't working to protect these children—our children.

**AB 2935 (Maienschein): Streamlining Credit Protection For Foster Youth.**

AB 2935 starts from the same premise as your Department of Social Services above: **minors should not have credit reports, period. If a foster child has a credit report, the child is a victim of fraud, period.**

For this reason, current laws and practices make no sense. It does not make sense, in step 1, to require a county social worker to search for a credit report, and if one is found, then, in step 2, require a social worker (or foster youth after they age out) on a child-by-child, back-and-forth basis to implore the credit bureau to fix what is obviously fraud. This is not what social workers are trained to do and not what former foster youth are competent or able to do. Indeed, under current law, any consumer who simply files a police report listing fraudulent credit report entries may have those entries immediately and permanently blocked, no further questions asked.

AB 2935, by operation of law, extends this same protection to foster children who should not have any credit report to begin with.

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<sup>17</sup> Remarks by Kyra Endoso on file with Jessica Heldman [jheldman@sandiego.edu](mailto:jheldman@sandiego.edu).

Similarly, as a foster child should not have a credit report, if one exists, it must be frozen to prevent the child from being victimized again and again while under our care. It is the number of adults who have access to credit-related information while a child is in foster care that is their biggest risk factor for identity theft. However, the report—with the negative information permanently blocked, having been frozen at the earliest opportunity to prevent further fraud—must be unfrozen when the child turns 18 because, for example, the child may urgently need the report to avoid homelessness by renting an apartment.

AB 2935 as amended after negotiations with credit bureaus accomplishes all of these things.

### **Amendments Negotiated and Taken at the Request of Equifax and Experian.**

Both Experian and, especially, Equifax engaged in many detailed and productive discussions with the author and sponsors, resulting in the significant amendments taken in August. The discussions focused on the topic of credit freezes and resulted in two categories of amendments:

- Credit bureaus currently permit security freezes to be placed for specified time periods. (See Exhibit A) Amendments were negotiated to ensure the bill permits credit bureaus to deploy their current security freeze practices to comply with the freeze requirements of the bill, which acknowledge that, in placing a freeze, the jurisdiction of a county does not extend beyond a child's age of majority. Aside from embracing current bureau practices, they also embrace the bureaus' current reliance on a list prepared by the Department of Social Services of county representatives authorized to ask for a freeze.<sup>18</sup>
- Current law requires social workers to check credit reports of foster children annually after a child turns 14. Under current law, freezes could be lifted or replaced as needed. The bill clarifies the grounds and bases for removing a freeze prior to when a foster child turns 18 and, through such clarification, will reduce the number of instances where bureaus must ensure freezes do not extend beyond the age of majority.<sup>19</sup>

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<sup>18</sup> “...if the request is from a county welfare department or a county probation department appearing on the most recent list provided or available to a consumer credit reporting agency by the State Department of Social Services and the requesting entity provides sufficient proof of identification under 15 U.S.C. Sec. 1681c-1(j)(1)(G). A county welfare department or county probation department shall not have the authority to request a security freeze for a protected consumer placed in foster care that continues beyond the protected consumer's 18th birthday. A consumer credit reporting agency may use whatever lawful mechanism is available to it, including mechanisms for thawing or unfreezing reports by dates certain, to ensure the freeze does not extend beyond a protected consumer's 18th birthday.

(B) Notwithstanding any other law, the State Department of Social Services may, at the request of a consumer credit reporting agency, provide or, in the State Department of Social Service's discretion, otherwise make available to consumer reporting agencies in any other manner, a list of county welfare departments or county probation departments whose employees may be representatives of protected consumers who have been placed in a foster care setting.”

<sup>19</sup> “(2) With respect to a security freeze placed for a protected consumer under paragraph (2) of subdivision (a), the freeze may be removed prior to the protected consumer's 18th birthday at the request of the representative of the protected consumer, or by the protected consumer if the protected consumer is 16 years of age or older at the time they make the request, under any of the following circumstances:

**Opposition Arguments Are Contradicted By The Text Of The Bill and Case Law, Including a Case Brought by the Opposition.**

While AB 2935 was without opposition in three Assembly Committees and the floor, the Consumer Data Industry Association (CDIA) opposed the bill in the Senate. Respectfully, the trade association's arguments were tested and shown as unpersuasive by the bi-partisan support for the bill. The reasons the CDIA's arguments proved unpersuasive were as follows:

**First**, CDIA argued without explanation that "AB 2935 does not provide sufficient protection for the authentication of a child's information when a freeze is placed." On the contrary, as the bill has been amended after discussions with Equifax and Experian, bureaus are permitted to rely upon information provided to them by the Department of Social Services for authentication as well as the still-binding, remaining authentication requirements of federal law. (See, for e.g., the bill's reference to sufficient proof of identification pursuant to 15 U.S.C. Sec. 1681c-1(j)(1)(G).)

**Second**, CDIA argued that "automatically removing a credit freeze for all foster children at age 18 has the potential to allow family members and friends the opportunity to take advantage of the youth's credit history." References to "automatic" removal have been deleted. However, observe that not lifting a freeze means a teenager frantically trying to find a job and a place to live with zero help will also have to—alone—figure out how to deal with three credit bureaus in lifting three freezes.

The child may not have a phone, nor access to the Internet. They may be scrounging garbage or food banks for their next meal. The idea that a foster child will have the sophistication and time and resources to do this was rightly ridiculed on a bi-partisan basis during hearings on this bill.

As well, the risk of identity theft for foster children stems from the number of adults who have at-the-ready access to personal information while the child is in care. Once out of care, the risk of identity theft declines. This is the cruel paradox addressed by this bill: it is their status as foster children under our care that is the greatest risk factor of being victimized by a debilitating financial crime.

**Third**, CDIA argued that the security freeze provisions are preempted. The trade association asserts: "all state credit freeze laws looking backward and all state legislation looking forward no longer had or will have legal effect." However, this expansive view of federal preemption of the Federal Fair Credit Reporting Act has been rejected by both federal courts and the CFPB. The bluntest rejection occurred in 2022 in a case brought by none other than CDIA itself regarding its effort to invalidate state laws governing credit reporting of medical debt and debt arising from economic abuse. In *CDIA v. Frey* (1st Cir. 2022) 26 F.4th 1, 6-7, the appellate

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(A) Upon the protected consumer's removal from foster care.

(B) Upon the protected consumer's request, if the protected consumer is 16 years of age or older.

(C) Upon a determination by the representative of the protected consumer that removal of the security freeze is in the best interest of the protected consumer.

(3) A representative of the protected consumer may also remove the freeze pursuant to paragraph (2) at a time when the representative inquires with each of the three major credit reporting agencies pursuant to paragraph (1) of subdivision (a) of Section 10618.6 the Welfare and Institutions Code."

panel rejected CDIA's challenge to the law and likewise any sweeping versions of FCRA preemption, ruling, for example:

We are not persuaded by CDIA's argument that Section 1681t(b)(1)(E) preempts all state laws "relating to information contained in consumer reports," regardless of whether they regulate subject matter regulated by Section 1681c. That is not the most natural reading of the statute's syntax and structure. ...

Not only would CDIA's proposed interpretation render the references to the statutory provisions surplusage but it would also disregard the care and specificity with which Congress drafted those provisions.

**Conclusion.**

Foster children — our very own children — are being criminally victimized while under our care. The stakes for them are enormous. Please, let's help them simply by making it easier to remedy the consequences of a crime committed against them on our watch. Please sign AB 2935 (Maienschein).

Sincerely,

A handwritten signature in dark ink, appearing to read "E. Howard", written in a cursive style.

Edward Howard  
Senior Counsel, Children's Advocacy Institute

## EXHIBIT A

### AB 2395 (MAIENSCHIEIN): CREDIT BUREAUS OFFER CONSUMERS SECURITY FREEZES THAT EXPIRE ON A PRE-SET DATE. THEY CAN DO THE SAME TO HELP FOSTER KIDS.

*Can credit bureaus program security freezes to expire on a date certain? Yes.*

Here's what they offer the public:

#### 4. Security freezes can be temporarily lifted

If you're applying for credit – buying a new vehicle, for instance – and you have a security freeze on your credit report, you can temporarily lift the security freeze to allow for a credit check. At Equifax, you can use your myEquifax account to lift a security freeze for a date range you specify. You can also lift a security freeze by phone by calling our automated line at (800) 349-9960 or calling Customer Care at (888) 298-0045. Afterward, your Equifax credit report will be frozen again.

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Freezing or unfreezing your credit report online with Experian is done in real time. You can add or remove a freeze and schedule an unfreeze. When unfreezing your credit report, you have two options. You can permanently remove a freeze until you decide to freeze it again. Alternatively, you can schedule a thaw while your credit report is already frozen, where you can specify the start and end date. This makes it convenient when you know you will need to apply for credit, such as when you are in the market to get a new car loan.

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<sup>20</sup> <https://www.equifax.com/personal/education/identity-theft/articles/-/learn/8-facts-about-credit-freezes/#:~:text=If%20you're%20applying%20for,a%20date%20range%20you%20specify>

<sup>21</sup> <https://www.experian.com/freeze/center.html> (How does an Experian security freeze work?)



### How can I unfreeze my credit file?

You can permanently remove/lift a security freeze on your credit file with one click **or schedule an unfreeze** for a specified time period.

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### AS EXPERIAN CORRECTLY ACKNOWLEDGES:

Children in the foster care system are especially vulnerable to identity theft. "It's rather common for these kids to be passed around from one person to the next," says Velasquez. "Their odds of being an identity theft victim are much higher than the general population."

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<sup>22</sup> <https://www.experian.com/freeze/center.html>

<sup>23</sup> <https://www.experian.com/blogs/ask-experian/should-you-freeze-your-childs-credit-file/>