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## SENATE COMMITTEE ON HUMAN SERVICES

Senator Hurtado, Chair  
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**Author:** Skinner  
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**Subject:** Foster youth: relative placement

### SUMMARY

This bill makes changes to the standard exemption process for criminal clearances during the resource family approval processes within the child welfare system, as provided. The bill also authorizes a relative who is seeking approval as a resource family to seek an expedited review of a criminal records exemption request or denial, and proposes changes to the administration hearing process for relatives seeking to appeal and exemption denial, as provided.

### ABSTRACT

#### Existing Law:

- 1) Establishes a state and local system of child welfare services, including foster care, for children who have been adjudged by the court to be at risk of abuse and neglect or to have been abused or neglected, as specified. (*WIC 202*)
- 2) Establishes a system of juvenile dependency for children for specified reasons, and designates that a child who meets certain criteria is within the jurisdiction of the juvenile court and may be adjudged as a dependent child of the court, as specified. (*WIC 300 et seq.*)
- 3) Requires a social worker to immediately investigate the circumstance of the child and the facts surrounding the child being taken into custody and attempt to maintain the child with the child's family through the provision of services, when a child is taken into temporary custody, as provided, and brought to the social worker. (*WIC 309(a)*)
- 4) Requires the county welfare department to initiate an assessment of a relative or non-relative extended family member's suitability for emergency placement if a relative, an extended family member of an Indian child, or a nonrelative extended family member (NREFM) is available and requests emergency placement of the child pending the detention hearing, or after the detention hearing and pending the dispositional hearing, as provided. (*WIC 309(d)(1)*)

- 5) Provides for the continued placement of a child in a relative or NREFM home following additional assessment and approval as a resource family, as provided. (*WIC 309(d)(2)*)
- 6) Requires a social worker to conduct, within 30 days of a child's removal, an investigation to identify and locate all grandparents, parents of a sibling of the child, adult siblings, other adult relatives, and, if the child is an Indian child, any extended family members, as defined. Further requires the social worker to provide to all located adult relatives written notification, and whenever appropriate oral notification, information regarding the child's removal, an explanation of various options to participate in the care and placement of the child and support for the child's family, as provided. (*WIC 309(e)(1)*)
- 7) Applies the law related to background checks for a resource family applicant to any adult residing in the resource family home, but exempts adult friends and family of the foster parent who visit the foster parents' home, parents of a foster child's friend, and individuals engaged by the foster parent to provide short term care, as long as the foster parent utilize the reasonable and prudent parent standard in each of those situations, as provided. (*HSC 1522(b)(1)(B), (b)(3)*)
- 8) Requires CDSS, or other approving entity, to perform a background check of a resource family applicant, or an individual residing in their home, as provided, before issuing a license or certificate of approval to any person seeking to operate a foster family home, certified family home, or resource family, as provided. Further requires CDSS or other approving authority to determine from this criminal history whether the applicant, or other specified person, has ever been convicted of a crime, as provided. (*HSC 1522(d)(1)*)
- 9) Requires CDSS, or other approving entity, to deny the application to be a foster family home, certified family home, or resource family if CDSS finds that the applicant, or other adult living in the home, has been convicted of a crime other than a minor traffic violation or specified marijuana offenses, unless CDSS grants an exemption from disqualification, as provided. Additionally provides for the revocation or rescinding of a license if a non-exemptible crime is discovered after licensure or the granting of a certificate of approval. (*HSC 1522(d)(7)-(8)*)
- 10) Allows for CDSS to grant exemption from disqualification for license for a foster care provider applicant after a review of the record if CDSS has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or granting of an exemption. (*HSC 1522(g)(1)*)
- 11) Treats the following convictions as non-exemptible: treason; perjury resulting in the execution of an innocent person's threats to victims or witnesses; any murder/attempted murder/voluntary manslaughter; any mayhem; torture; kidnapping; any robbery; carjacking; train wrecking; assault with intent to commit mayhem, rape, sodomy, or oral copulation; human trafficking of adults or minors; sexual battery; rape; rape of spouse; rape in concert; enticing minor into prostitution; induce to sexual intercourse by fear or consent through fraud; pimping a minor; pandering a minor; providing a minor under 16 for lewd or lascivious acts; abduction for prostitution; aggravated assault of a child; contributing to delinquency of a minor; assault of a child eight years or younger; incest;

sodomy and attempted sodomy; lewd or lascivious act upon a child under 14; oral copulation; distributing lewd material to children; contact with minor to commit sexual offense; meeting with minor for sexual purpose; continuous sexual abuse of a child; sexual conduct with a child 10 years or younger; genital or anal penetration by foreign object; registration of sex offenders; sent or brought into state for possession or distribution of child-related pornography; sexual exploitation of a child; using a minor to assist in making or distributing child pornography; advertising or distributing child pornography; possessing child pornography; felony conviction for lewd or obscene exposure of private parts; poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, or reservoir; felony conviction for elder or dependent adult abuse; drawing, exhibiting, or using a firearm or deadly weapon on the grounds of a daycare center; arson with great bodily injury; arson of inhabited structure or property; gang related extortion; annoy, molest child under 18; solicit another to commit rape, sodomy, etc.; any attempted murder; any felony punishable by death or imprisonment in the state prison for life without possibility of parole but not for an indeterminate sentence; enhancement for any felony which inflicts great bodily injury; exploding or igniting or attempting to explode or ignite any destructive device or explosive with the intent to commit murder; enhanced sentence for listed felonies where use of a firearm; felony conviction for weapons of mass destruction; sexual exploitation by physicians, surgeons, psychotherapists, or alcohol and drug abuse counselors. *(HSC 1522(g)(1)-(2))*

- 12) Provides, as a result of the federal Adam Walsh Protection and Safety Act of 2006, that under no circumstances shall an individual be able to request a criminal record exemption for any felony conviction for child abuse or neglect, spousal abuse, crimes against a child (including child pornography, or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery. *(HSC 1522(g)(2)(A)(iii))*
- 13) States that the provision of law stating non-exemptible crimes for foster care provider applicants shall remain operative only to the extent that compliance with its provisions is required by federal law as a condition for receiving funding under Title IV-E of the Federal Social Security Act. *(42 U.S.C. Sec. 670 et seq.) and (HSC 1522(g)(2)(A)(iii)(IV))*
- 14) Allows CDSS or other approving entity to grant an exemption from disqualification to a foster care provider, resource family applicant, or other adult living in their home if CDSS or other approving entity has substantial and convincing evidence to support a reasonable belief that the applicant or the person convicted of the crime is of present good character necessary to justify the granting of an exemption and the conviction is for one of the following offenses:
  - a) Any misdemeanor conviction in the last five years that is not otherwise prohibited, including misdemeanor convictions for statutory rape, indecent exposure, or financial abuse against an elder, as defined;
  - b) Any felony conviction within the last seven years that is not otherwise prohibited. *(HSC 1522(g)(2)(B))*

- 15) When granting an exemption for a crime, CDSS or other approving entity must consider all reasonably available information, including, but not limited to, the following: the nature of the crime or crimes, the period of time since the crime was committed, the number of offenses, circumstances surrounding the commission of the crime indicating the likelihood of future criminal activity, activities since conviction (including employment, participation in therapy, education, or treatment), whether the person convicted has successfully completed probation or parole, obtained a certificate of rehabilitation, or been granted a pardon by the Governor, any character references or other evidence submitted by the applicant, whether the person convicted demonstrated honesty and truthfulness concerning criminal history during the application and approval process. (*HSC 1522(g)(2)(C)*)
- 16) Requires CDSS or other approving entity to grant an exemption from disqualification to a foster care provider applicant, resource family applicant, or other adult residing in the home, if the individual's state and federal criminal history information received from the Department of Justice independently supports a reasonable belief that the applicant or person convicted of the crime is of present good character necessary to justify the granting of an exemption. CDSS may still evaluate the person with a criminal history, as provided, at its discretion, as necessary to protect the health and safety of the child. (*HSC 1522(g)(2)(D)*)
- 17) Provides that reunification services need not be provided to a parent or guardian when the court finds, by clear and convincing evidence, that the parent or guardian has been convicted of a violent felony, provided. (*WIC 361.5(b)(12)*)
- 18) Requires CDSS to adopt standards pertaining to the home environment and permanency assessments of a resource family, as provided. (*WIC 16519.5(d)(1)*)
- 19) Provides that when an applicant is a relative or NREFM to an identified child, the family evaluation shall consider the nature of the relationship between the relative or nonrelative extended family member and the child. Further provides that the relative or NREFM's expressed desire to only care for a specific child or children shall not be a reason to deny the approval. (*WIC 16519.5(d)(3)(B)(i)*)
- 20) Requires, when the child is placed on an emergency basis, the home environment assessment, the permanency assessment, and the written report shall be completed within 90 days of the placement, unless good cause exists based on the needs of the child. (*WIC 16519.5(d)(4)(A)*)
- 21) Provides for an administrative hearing process by which decisions regarding a requested criminal records clearance exemption may be appealed, as provided. (*WIC 16519.6*)

**This Bill:**

- 1) Requires CDSS to submit a report to the Legislature by January 1, 2023 that includes the number of resource family applicants who applied for resource family approval to care for a relative child that were denied criminal records exemption and the number who

were ineligible for a criminal records exemption, as provided. Further requires CDSS to stratify the data by a variety of demographic characteristics, including, as a minimum, by race and income level.

- 2) Makes changes to existing law that allows CDSS to grant an exemption from disqualification to a foster care provider, resource family applicant, or any individual subject to background check requirements, by instead requiring CDSS to grant such an exemption if the applicant does not pose a substantial risk of abuse or neglect to the children in their care and the conviction is a misdemeanor conviction within the last three years that is not otherwise prohibited, as provided, or any felony conviction within the last five years, that is not otherwise prohibited, as provided.
- 3) Adds the following to considerations CDSS or other approving entity shall consider when granting an exemption for crime:
  - a) Existence or absence of peer-reviewed evidence-based research showing that the conviction history demonstrates a proclivity to abuse or neglect children;
  - b) Other evidence of the applicant's or person's willingness and ability to provide a loving, safe, and stable home for children;
  - c) If the person is seeking approval as a resource family to provide care to a specific relative child or children, the department or other approving entity shall also consider the wishes of the child or children, the availability of other relative caregivers, and the strength of the existing bond between the person and the child or children.
- 4) Strikes the inclusion of instances where the parent or guardian of the child has been convicted of a violent felony, as defined, from those circumstances where reunification services need not be provided to a parent or guardian.
- 5) Provides that if a relative requested a child be placed with them on an emergency basis, as provided, but the child has not been placed with the relative because of a conviction on the relative's records and CDSS or the county has either denied an exemption for the disqualification or has not rendered a decision on the exemption from disqualification within 90 days after the relative requested the placement, the relative may petition the court to order CDSS or the county to grant the exemption from disqualification or order that the child be placed with the relative on an emergency basis pending further review of the request for an exemption from disqualification. Further allows the court, in order to further the statutory preference for relative placements, to order the emergency placement if it is in the best interests of the child.
- 6) Provides for a person seeking approval as a resource family for a specific relative child or children, regardless of whether the child or children has been placed with the applicant on an emergency basis, to seek expedited review of a criminal records exemption request or denial if all of the following are true:

- a) The applicant has requested an exemption and the exemption has been denied or no decision has been made on the application;
  - b) Ninety days have passed since submission of a completed application requesting an exemption; and
  - c) Reunification services have not been provided or have been terminated for all parents who are parties to the action.
- 7) Requires the agency to which an applicant is seeking approval as a resource family to notify the applicant, who is seeking approval as a resource family to provide care to a relative and who has pending or denied requests for criminal records exemptions, of their right to an expedited appeal and court review within five days of the date the court ordered that reunification services for all parents not be provided or be terminated.
- 8) Provides for an administrative hearing for resource family applicants seeking approval for placement of a relative with a pending or denied request for a criminal records exemption, as provided, if they file an appeal within 10 days of notification. Further provides that the administrative hearing shall occur within 30 days of their filing an appeal and that CDSS shall render a decision within 10 days of the administrative hearing.
- 9) Provides for a process by which a resource family applicant may petition the court for review of the exemption decision, as provided.

### **FISCAL IMPACT**

This bill has not yet been analyzed by a fiscal committee.

### **BACKGROUND AND DISCUSSION**

#### **Purpose of the Bill:**

According to the author, “the state of California has over 60,000 children in the child welfare system, and disproportionately they are from black and brown families. According to the Child Welfare Indicators Project, Black and Latinx children are 2.8 and 1.22 times more likely to have contact with the child welfare system than their white counterparts. This, coupled with a history of mass incarceration in the United States, has led to children of system impacted families facing barriers to being reunited with their parents or relatives.”

The author goes on to note that “it is well known that children living with family members or relatives rather than institutional or non-familial foster care experience better outcomes. Since 2015, the state has worked towards implementing Continuum of Care Reform recommendations, emphasizing home-based family placements of foster children and reducing the use of congregate care. SB 354 seeks to address barriers to family reunification in the Resource Family Approval process for children with potential relative caregivers with a criminal history that does not endanger the child.”

*Continuum of Care Reform (CCR)*

The CCR is a system-wide effort to institute a series of reforms to California's child welfare services (CWS) system. It is designed out of an understanding that children who must live apart from their biological parents do best when they are cared for in committed nurturing family homes. For more than a decade, researchers have documented poor outcomes for foster children. These outcomes have been especially pronounced for those placed in group or congregate care settings. CCR was designed to reduce the number of foster children placed in congregate care settings by improving the assessments of children and families and establishing a child and family team for each child in foster care. Assembly Bill 403 (*Stone, Chapter 773, Statutes of 2015*) was the first of six CDSS-sponsored CCR bills and provided the statutory and policy framework to ensure services and supports provided to the child or youth and their family are tailored toward the ultimate goal of maintaining a stable permanent family.

*Child Welfare Services (CWS)*

The CWS system is an essential component of the state's safety net. Social workers in each county who receive reports of abuse or neglect, investigate and resolve those reports. When a case is substantiated, a family is either provided with services to ensure a child's well-being and avoid court involvement, or a child is removed and placed into foster care. In 2019, the state's child welfare agencies received 477,614 reports of abuse or neglect. Of these, 69,652 reports contained allegations that were substantiated and 28,646 children were removed from their homes and placed into foster care via the CWS system. As of October 1, 2020, there were 60,045 children in California's CWS system.

After the county child welfare department becomes involved with families, approximately 12 months of services are provided to children who are able to remain safely in their home while the family receives services. This is considered family preservation services and the child does not come under the jurisdiction of the juvenile dependency court during this time.

If it is determined that a child cannot remain in the home, even with family preservation and support services, the child comes under the jurisdiction of the county's juvenile dependency court while the family is served by a CWS system social worker. This system seeks to ensure the safety and protection of these children, and where possible, preserve and strengthen families through visitation and family reunification. It is the state's goal to reunify a foster child or youth with their biological family whenever possible.

Generally, if a child cannot be safely returned home after the time allotted for reunification services ends, the court terminates the parental rights of the child's parents. The child's case plan then focuses on permanency services, in an effort to connect the child to a permanent placement through adoption or guardianship. If an adoption or guardianship is not established, a child may remain in long-term foster care. The child is always supposed to be placed in the most family like setting, with short-term residential treatment programs used only as necessary to provide

intensive services. A child remains eligible for services for the length of their time in the child welfare system, time limits relate to the provision of services to the child's parents.

In some circumstances, existing law allows the court to not provide reunification services at all, and parental rights are terminated without the opportunity for reunification. These circumstances include, but are not limited to the following examples: when the whereabouts of the parent are unknown; when the parent is suffering from a mental disability, as provided, that renders the parent incapable of utilizing those services; when the parent caused the death of another child through abuse or neglect; after a finding of severe sexual abuse; when the parent has been convicted of a violent felony, as provided; and in some instances where a prior child of the parent became a dependent of the court and was unable to reunify.

One component of this bill proposes to strike the provision that allows reunification services be denied to parents or guardians who have been convicted of a violent felony, as provided in Penal Code 667.5. This would mean that parents or guardians who have been convicted of certain violent felonies would be eligible for reunification services. The cross referenced penal code includes a variety of violent felonies ranging from murder to robbery to burglary to carjacking. Existing law does not require the court to consider the amount of time that has passed since the conviction or other mitigating factors. This suggests that there may be instances where the violent felony conviction may not be an indicator of the parent's ability to be safely reunited with their child after the provision of CWS system services. Should this bill pass out of this committee, the author's office may wish to work with CDSS and other stakeholders to consider whether the language should be struck in its entirety or whether there should be requirements for the court to consider mitigating factors or make decisions on a case by case basis.

#### *Placement with Relatives*

State and federal law include a preference to place children in out-of-home care with relatives. For example, state law, Welfare and Institutions Code Section 361.3, states that preferential consideration must be given to a request by a relative of the child for placement of the child with the relative. The child's social worker must always determine whether such a placement is appropriate by considering a variety of factors, as specified, including the ability of the relative to provide a safe, secure, and stable environment for the child, but preference is provided for a relative or NREFM placement.

Numerous nationwide studies have documented the poor outcomes of children and youth who are removed from their homes and placed into the child welfare system. Children involved with the CWS system have increased rates of chronic health problems, developmental delays and disabilities, mental health needs, and substance abuse problems. Many youth in care have experienced traumatic events, including removal from their homes that lead to symptoms such as depression, behavior problems, hypersensitivity, and emotional difficulties. Twenty-five percent of youth who age-out of care experience Post-Traumatic Stress Disorder – double the rate of U.S. war veterans.<sup>1</sup> Studies have also demonstrated the significant benefit to children in the child welfare system that are placed with relatives rather than with strangers in foster homes or in group care. A 2008 study in the Archives of Pediatric and Adolescent Medicine found that children placed into kinship care had fewer behavioral problems three years after placement than

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<sup>1</sup> [http://www.childrensaidsociety.org/files/upload-docs/report\\_final\\_April\\_2.pdf](http://www.childrensaidsociety.org/files/upload-docs/report_final_April_2.pdf)

children who were placed into foster care. This study also noted that a large body of research acknowledges the evidence that children in kinship care are less likely to change placements, benefiting from increased placement stability and better outcomes. Researchers also found that children placed with relatives were more likely to remain in their same neighborhood, be placed with siblings, and have consistent contact with their birth parents than other children in foster care.<sup>2</sup>

In support of this preference, a variety of recent legislative efforts encourage relatives to care for children in the CWS system. The Approved Relative Caregiver funding program (*SB 855 (Committee on Budget and Fiscal Review, Chapter 29, Statutes of 2014)*) was established, initially as a county option, to provide funding to family caregivers in an amount equal to the basic foster care rate. The program was made mandatory through CCR, with the passage of AB 403 (*Stone, Chapter 773, Statutes of 2015*), remedying rate inequity that left many low income relatives with support payments from the CalWORKs program only, which are significantly less than the basic foster care rate. Furthermore, the Resource Family Approval (RFA) process, discussed further below, replaced multiple processes for licensing and approving homes of relative and nonrelative caregivers, and was enacted statewide through CCR.

#### *Resource Family Approval Program (RFA)*

A resource family is a caregiver who provides out-of-home care for children in foster care. A resource family may be related to the child, have a familiar or mentoring relationship or have no previous relationship to the child. The RFA program created a single process for the approval of foster family homes, relative or nonrelative extended family member (NREFM) homes for foster care, and to approve families for legal guardianship or adoption. RFA was designed to be a unified, family friendly, child-centered process for the approval of home based placements. Under RFA, all family based placements are referred to as a resource family, regardless of whether or not the child was related to the family. Placements that are not family based include short term residential therapeutic programs (STRTPs), which serve as a short term placement for the provision of intensive services with the goal of the child then stepping back down to a family based placement.

The RFA program was also intended to do the following:

- Streamline and eliminate the duplication of the prior approval processes;
- Unify approval standards for all caregivers, regardless of the child's case plan;
- Include a comprehensive psychosocial assessment, home environment check, and training for all families;
- Prepare families to better meet the needs of vulnerable children in the foster care system; and
- Allow for a seamless transition to permanency (whether the permanency outcome be adoption or guardianship).

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<sup>2</sup> *Arch Pediatr Adolesc Med.* 2008;162(6):550-556. doi:10.1001/archpedi.162.6.550.

This process allows the reviewing agency (CDSS or the county) to make considerations related to a resource family applicant's existing relationship with a child or children when a relative or NREFM applies to be a resource family for a specific child or children. This includes allowing the reviewing agency to consider the nature of the relationship between the relative/NREFM and child when completing the family evaluation and prohibiting the rejection of a resource family applicant based on their interest in only providing care for a specific relative child or children.

The RFA process involves:

- A comprehensive psychosocial assessment;
- The completion of a written family evaluation;
- A home environment check; training requirements for all families; and
- A criminal records clearance requirement.

In some instances, a child may be placed with a relative on an emergency placement basis while an RFA is pending. This typically stems from the fact that the relative was not planning to be a resource family before a child in their own family was removed from the child's home by child welfare services. In all other circumstances the approval process occurs before a child is placed with the resource family.

This bill would provide for a court to be able to order the emergency placement of a child with a relative or NREFM if the court determines it is in the best interest of the child and the relative has requested the child be placed with them on an emergency basis, as provided, but the placement has not occurred because of the relative or NREFM's conviction history resulted in their being denied a criminal clearance exemption (discussed below) or a decision has not yet been made on the exemption request within 90 days after the relative requested the placement. This does not align with timelines in existing law related to emergency placements. At the time of writing, the author and sponsors were in the process of working with stakeholders to amend this. Additionally, while working on this portion of the bill, should this bill pass out of this committee, the author may wish to consider whether allowing the court to make the decision regarding an exemption and resulting placement would impact the child and family's eligibility for services or permanency. The author may wish to work with stakeholders to ensure these changes would not unintentionally result in changes to such eligibility.

#### *Background Check Process for RFA*

Part of the RFA process is criminal record background check process, which is the subject of this bill. According to CDSS's RFA Background Assessment Guide:

“the criminal record background check process is intended to ensure that applicants, as well as persons residing or regularly present in the home, do not present a threat to the health and safety of a child or nonminor dependent. And individual's criminal history may be one factor in determining whether a person is of good character... The background check process provides individuals with criminal history an opportunity to prove that they are rehabilitated and of present good character. Thus, if a person has a criminal conviction or a history of criminal conduct such as an arrest that did not result in

conviction, the reviewing agency must determine whether or not the person presents a potential health and safety risk to a child or nonminor dependent.”<sup>3</sup>

All resource families, regardless of whether they are relatives of the child, are subject to the same criminal record clearance requirements. Existing law provides for a process by which a resource family applicant shall be fingerprinted and have their criminal record background check completed. The reviewing agency, whether CDSS or the county, must then review the criminal history and determine whether the person has a history of convictions other than minor traffic violations and some minor marijuana convictions. If such a history is found, the reviewing agency must determine whether the convictions are for a crime that is non-exemptible or exemptible.

### Non-exemptible Crimes

If a resource family applicant is found to have a conviction for a non-exemptible crime during the criminal record clearance process, the reviewing agency, is prohibited from granting that individual a criminal record exemption. This is true regardless of when the conviction occurred or whether the individual has a pre-existing relationship to the child.

Non-exemptible crimes include: treason; perjury resulting in the execution of an innocent person; threats to victims or witnesses; any murder/attempted murder/voluntary manslaughter; any mayhem; torture; kidnapping; any robbery; carjacking; train wrecking; assault with intent to commit mayhem, rape, sodomy, or oral copulation; human trafficking of adults or minors; sexual battery; rape; rape of spouse; rape in concert; enticing minor into prostitution; induce to sexual intercourse by fear or consent through fraud; pimping a minor; pandering a minor; providing a minor under 16 for lewd or lascivious acts; abduction for prostitution; aggravated assault of a child; contributing to delinquency of a minor; assault of a child eight years or younger; incest; sodomy and attempted sodomy; lewd or lascivious act upon a child under 14; oral copulation; distributing lewd material to children; contact with minor to commit sexual offense; meeting with minor for sexual purpose; continuous sexual abuse of a child; sexual conduct with a child 10 years or younger; genital or anal penetration by foreign object; registration of sex offenders; sent or brought into state for possession or distribution of child-related pornography; sexual exploitation of a child; using a minor to assist in making or distributing child pornography; advertising or distributing child pornography; possessing child pornography; felony conviction for lewd or obscene exposure of private parts; poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, or reservoir; felony conviction for elder or dependent adult abuse; drawing, exhibiting, or using a firearm or deadly weapon on the grounds of a daycare center; arson with great bodily injury; arson of inhabited structure or property; gang related extortion; annoy, molest child under 18; solicit another to commit rape, sodomy, etc.; any attempted murder; any felony punishable by death or imprisonment in the state prison for life without possibility of parole but not for an indeterminate sentence; enhancement for any felony which inflicts great bodily injury; exploding or igniting or attempting to explode or ignite any destructive device or explosive with the intent to commit murder; enhanced sentence for listed felonies where use of a firearm; felony conviction for weapons of mass destruction; sexual exploitation by physicians, surgeons, psychotherapists, or alcohol and drug abuse counselors. (Health and Safety Code 1522(g)(1)-(2))

<sup>3</sup> [https://calswec.berkeley.edu/sites/default/files/rfa\\_bag\\_rev.3-14-18.pdf](https://calswec.berkeley.edu/sites/default/files/rfa_bag_rev.3-14-18.pdf)

Additionally, federal law, the Adam Walsh Child Protection and Safety Act of 2006, provides that exemptions may not be granted when a felony conviction for the following crimes is found: child abuse or neglect; spousal abuse; crimes against a child (including child pornography); or for a crime involving violence (including rape, sexual assault, or homicide, but not including other physical assault or battery convictions).

Any other criminal history revealed during the criminal record clearance process (except for minor traffic violations and some minor marijuana violations which are not considered) are potentially eligible for an exemption.

#### Exemptions to the Criminal Record Clearance Requirements

Under existing law, any individual who has been convicted of a crime, other than a minor traffic violation or some minor specific marijuana related convictions that are more than two years old, is disqualified from approval as a resource family, *unless* an exemption is granted. The reviewing agency has the authority to “exempt” a resource family applicant from the requirement of having a criminal record clearance. Exemptions typically occur in one of two ways: standard exemptions and simplified exemptions.

- Standard Exemption
  - May be granted if the reviewing agency is in possession of substantial and convincing evidence to support a reasonable believe that the individual is rehabilitated and of present good character necessary to justify the granting of an exemption
  - Must be sought by the individual. The reviewing agency notifies the individual of their need to complete the standard exemption process. Requires the compilation and evaluation of relevant information that would support the approval or denial of an exemption request, including character references, verification of completed court ordered trainings, classes, treatment, counseling, etc.
  - Is used if the resource family applicant’s conviction is not an non-exemptible crime and meets any of the following: felony conviction within the past 7 years; misdemeanor conviction within the past five years; misdemeanor conviction for statutory rape; misdemeanor conviction for lewd or obscene exposure of private parts; misdemeanor conviction for elder or dependent adult abuse.
  - Requires the reviewing agency to consider all reasonably available information, including: the nature of the crime or crimes involved; the period of time since the crime was committed; the number of offenses; circumstances surrounding the commission of the crime and what they suggest in regards to likelihood of future criminal activity; activities since conviction – such as employment, participation in therapy, education, or treatment; whether the person has successfully completed probation or parole, obtained a certificate of rehabilitation, or been granted a pardon by the Governor; any character references or other evidence submitted by the applicant; and, whether the person demonstrated honesty and truthfulness concerning

the crime during the application and approval process and made reasonable efforts to assist CDSS in obtaining records and documents concerning the crime or crimes.

- Simplified Exemption
  - May be used for individuals whose criminal history does not contain a non-exemptible offense and does not meet the criteria listed above for a standard exemption.
  - Entails only an examination of the convicted person's rap sheet and any written or verbal self-disclosures received by the reviewing agency.
  - Does not require a response from the individual and/or the Resource Family.

However, the reviewing agency may require the standard exemption process if they believe health and safety concerns exist, even if the conviction(s) meet the simplified exemption criteria. This allows for a standard exemption process to be required whenever the approving agency believes it is necessary, regardless of the exemptible conviction. The simplified exemption process was created by SB 213 (*Mitchell, Chapter 733, Statutes of 2017*).

As currently in print, SB 354 does not make any changes to how non-exemptible crimes are treated. Rather it proposes changes to the standard and simplified exemption process. Existing law states that if the reviewing agency finds the evidence necessary to support the granting of an exemption, they "may" grant the exemption, this bill changes that to a "shall." The term "shall" is used in existing law with regard to the simplified exemption process.

For both the standard and simplified exemption process, the bill changes the requirement that the evidence support a reasonable belief that the applicant "is of present good character necessary to justify the granting of an exemption" to instead require that the evidence support a reasonable belief that the applicant "does not pose a substantial risk of abuse or neglect to children in the person's care."

Additionally, the bill proposes to apply the standard exemption process to any qualifying misdemeanor conviction that occurred within the last three years and any qualifying felony conviction that occurred within the last five years. Existing law applies it to those occurring within the last five and seven years, respectively. Those would be subject to the simplified process under this bill, essentially expanding the simplified exemption process. However, the bill does nothing to change the reviewing agencies' authority to require an applicant with a criminal history qualifying for the simplified exemption process to instead be subject to the standard exemption process if the reviewing agency has health and safety concerns.

In regards to the standard exemption process, the bill also requires the approving agency to consider three additional areas of information when determining whether to issue an exemption:

- the existence or absence of peer-reviewed evidence-based research showing that the conviction history demonstrates a proclivity to abuse or neglect children;
- other evidence of the applicant's or person's willingness and ability to provide a loving, safe, and stable home for children; and

- if the applicant is a relative or NREFM seeking to provide care for a specific relative child/children, then the approving entity shall consider the wishes of the child/children, the availability of other relative caregivers, and the strength of the existing bond between the person and the child or children.

As reviewing agencies are not currently required to speak to the existence or absence of peer-reviewed, evidence-based research regarding the implications of the conviction history, it is not clear what this process would look like. If this bill passes through this committee, the author's office may wish to work with the County Welfare Directors Association and CDSS to further explore this requirement. In regards to changes related requiring additional considerations when the applicant is a relative or NREFM and has a pre-existing relationship with the child, this suggests movement towards allowing child specific exemptions. Such exemptions would allow reviewing agencies to consider existing bonds between the child and the applicant and make decisions based on the best interests of that particular child rather than trying to fit the applicant into a particular exemption "box." Such decision-making would allow approving entities to keep youth connected to relatives and NFREMs, perhaps increasing their paths to permanency.

This bill would also make changes to the administrative hearing process timeline for when a relative seeks to appeal a decision regarding the denial of an exemption and allow for a relative to seek court approval for an exemption in certain, limited circumstances. This bill has been dual referred to the Judiciary Committee, this process falls within that Committee's jurisdiction.

#### *Resource Family Approval Data*

Additionally, this bill requires the collection and reporting of data relating to the denial of resource family applications due to lack of a criminal clearance. Specifically the bill proposes to require CDSS to submit a report on: (1) the number of resource family applicants who applied for RFA to care for a relative child and were denied a criminal records exemption through the standard exemption process and (2) the number of resource family applicants who applied for resource family approval to care for a relative child and who were ineligible for a criminal records exemption due to a nonexemptible crime. This bill would further require the department stratify the data by a variety of demographic data, including, at a minimum, by race and income level.

Currently, the California Child Welfare Indicators Project (CCWIP), a collaborative venture between the University of California at Berkeley and CDSS, does report the number of youth in Relative/NREFM placements at a given point in time. On October 1, 2020, 20,024 of California's 60,045 children and youth in foster care were in relative/NFREM placements. There is no data currently available on the number of relative RFA applicants denied. It is currently unclear if CDSS collects data related to the income level of RFA applicants. Having access to this information would allow the Legislature to better assess the challenges with RFA approval for relatives/NREFMs with a criminal history and help inform future policy decisions. Should this bill pass out of this committee, the author might consider working with CDSS and CWDA to determine what demographic information they will be able to collect in regards to this reporting request.

#### **Related/Prior Legislation:**

*SB 213 (Mitchell, Chapter 733, Statutes of 2018)* streamlined the background check process for prospective foster and adoptive parents by establishing a list of non-exemptible crimes, a list of crimes for which an exemption may be granted and a list of crimes for which exemptions must be granted, absent a reasonable belief that the person is not of good character at present.

*SB 1201 (Mitchell, 2016)* was substantially similar to SB 213 and would have made changes to the criminal records exemption procedures for relatives, nonrelative foster or resource families. It was held in the Senate Appropriations Committee.

*SB 942 (Liu, 2016)* would have required an early assessment of a relative home for placement of a dependent child, provided for court oversight if that early assessment did not occur in a timely manner, and required county welfare agencies to assist persons filing for criminal records exemptions with locating pertinent documents. This bill was held in the Assembly Appropriations Committee.

*AB 403 (Stone, Chapter 773, Statutes of 2015), AB 1997 (Stone, Chapter 612, Statutes of 2016), AB 404 (Stone, Chapter 732, Statutes of 2017), AB 1930 (Stone, Chapter 910, Statutes of 2018), AB 819 (Stone, Chapter 777, Statutes of 2019) and AB 2944 (Stone, Chapter 104, Statutes of 2020)* implemented CCR to better serve children and youth in California's child welfare services system.

*AB 2651 (Aghazarian, Chapter 701, Statutes of 2008)* made changes to state statute for matters of conformity with federal law related to criminal record checks for placement of a youth with prospective adoptive or foster parents.

## COMMENTS

The CWS services system seeks to ensure the safety and protection of California's children, and where possible, preserve and strengthen families through visitation and reunification. When reunification is not possible, it is the state's goal to provide a permanent placement alternative, with priority placed on uniting children with relatives or NREFMs. Understanding that the safety and best interest of the child is core to a child's involvement in the CWS system, it is appropriate that criminal history would be considered when deciding whether a placement is appropriate. However, recent efforts to strike a balance between structure and flexibility within the background clearance process reflect the fact that criminal history alone does not paint the full picture of whether a placement would pose a substantial risk of further abuse or neglect to the child. This bill can be viewed as a continuation of those efforts.

This bill takes steps to encourage additional considerations determining whether to provide an exemption to a criminal record clearance for a resource family applicant, particularly in instances where the applicant is a relative or NREFM of the child or children they are seeking to provide care for.

At the time of writing, the author's office and sponsors were working with stakeholders to address some of the questions discussed throughout the analysis. Should this bill pass out of this committee, the committee will remain interested in monitoring the progress of the bill.

**POSITIONS**

**Support:**

Starting Over, Inc. (Sponsor)  
Legal Services for Prisoners with Children (Sponsor)  
AOUON Orange County  
California Coalition for Women Prisoners  
Californians for Safety and Justice  
Center for Employment Opportunities  
Communities United for Restorative Youth Justice (CURYJ)  
Community Legal Services in East Palo Alto  
Cure California  
Dependency Legal Services (UNREG)  
East Bay Family Defenders  
Ella Baker Center for Human Right  
Fathers & Families of San Joaquin  
Fresno Barrios Unidos  
Initiate Justice  
Legal Aid at Work  
Los Angeles Dependency Lawyers, INC.  
Re store Justice  
Rubicon Programs  
San Francisco Public Defender  
Sigma Beta Xi, INC. (SBX Youth and Family Services)  
Silicon Valley De-bug  
The Mentoring Center  
The Place4grace  
Time for Change Foundation  
UC Berkeley's Underground Scholars Initiative (USI)

**Oppose:**

None received.

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