
THIRD READING

Bill No: SB 354
Author: Skinner (D)
Amended: 5/20/21
Vote: 21

SENATE HUMAN SERVICES COMMITTEE: 4-0, 4/6/21

AYES: Jones, Cortese, Kamlager, Pan

NO VOTE RECORDED: Hurtado

SENATE JUDICIARY COMMITTEE: 11-0, 4/27/21

AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Jones, Laird,
Stern, Wieckowski, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/20/21

AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, Wieckowski

SUBJECT: Foster youth: relative placement

SOURCE: A New Way of Life Reentry Project
Alliance for Children's Rights
Children's Law Center
County Welfare Directors Association of California
Legal Services for Prisoners with Children
Starting Over, Inc.
Underground Scholars Initiative at UC Riverside

DIGEST: This bill facilitates placement of foster youth with relatives and nonrelative extended family members (NREFMs) who have criminal records but do not present a danger to the child.

ANALYSIS:

Existing law:

- 1) Provides that a child may become a dependent of the juvenile court and be removed from their parents or guardian on the basis of abuse or neglect. (*WIC 300*)
- 2) Establishes the resource family approval process, which requires, among other things, a criminal record clearance for each applicant and adult residing in the home. Prohibits the California Department of Social Services (CDSS) from issuing a criminal record clearance to a person arrested for certain violent felonies against the individual unless the CDSS investigates the incident and secures admissible evidence as to whether the person poses a risk to the health and safety of the child. Generally prohibits an application for foster care or adoption from being granted if a person in the home has a criminal conviction, but allows for exemptions for certain types of crimes while categorically prohibiting exemptions for others. (*WIC 16519.5(d); HSC 1522(e)(2) and (g)*)
- 3) Provides that non-exemptible crimes are essentially any violent felony, including:
 - a) Enumerated crimes against the individual, as provided, including: physical and sexual assault, rape, child abuse or neglect, among others. (*HSC 1522(g)(2)(A)*)
 - b) The following types of felonies, which overlap with some of the non-exemptible crimes described above but are specifically required to be non-exemptible pursuant to Title IV federal funding requirements (42 U.S.C. § 671(a)(20)): regardless of when it occurred, child abuse or neglect, spousal abuse, crimes against a child, including child pornography, or a crime involving violence, including rape, sexual assault, or homicide, but this does not apply to physical assault and battery; and, within the last five years, physical assault, battery, or a drug- or alcohol-related offense. (*HSC 1522(g)(2)(A)(iii)(I)-(II)*)
- 4) Provides that exemptible crimes are all remaining crimes that are not identified as non-exemptible. Exemptible crimes subdivide into the following:
 - a) If the exemptible crime was a specified misdemeanor within the last five years or a specified felony within the last seven years, then CDSS or the approving entity *may* grant an exemption if there is substantial and convincing evidence to support a reasonable belief that the applicant is of

present good character. (*HSC 1522(g)(2)(B)*) When granting an exemption for such a crime, the CDSS or approving entity must consider all reasonably available information, as provided, including: the nature of the crime or crimes; the period of time since the crime was committed; circumstances surrounding the commission of the crime indicating the likelihood of future criminal activity, among other things.

- b) If the crime does not fall under 3) or under a), then CDSS or the approving entity *must* grant an exemption if the individual's state and federal criminal history information independently supports a reasonable belief that the applicant is of present good character necessary to justify the granting of an exemption. (*HSC 1522(g)(2)(D)*)

- 5) Provides for temporary placement of a child on an emergency basis with a relative or NREFM, as well as for placement of the child on a longer-term basis following the dispositional hearing to decide where the child will live, subject to the same criminal record clearance. Requires preferential consideration to be given to a placement request by a relative of the child. Prohibits temporary placement if a violent felony specified in 3), above, is found. (*WIC 309(d)(1-2)*); *319(h)*; *361.2(e)*; *361.4(b)*)

This bill:

- 1) Expands the scope of criminal records that are eligible for an exemption, specifically:
 - a) Makes all non-exemptible crimes exemptible, subject to the process described in 4(a), above, if the applicant is seeking placement of a child or children with whom the applicant has a family-like relationship, the applicant is of present good character, and placement with the relative or NREFM would not pose a health and safety risk to a child.
 - b) Adds to the factors considered in the process described in 4(a) the following: 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 person is seeking approval as a resource family to provide care to a specific relative child or children, the CDSS or other approving entity must also consider the wishes of the child or children and the strength of the existing bond between the person and the child or children.
 - c) Enlarges the scope of the process for granting an exemption under 4(b) by reducing the scope of crimes that would fall under 4(a). Specifically:

changes the application of the process in 4(a) to apply to misdemeanor and felony convictions to those that occurred within the last three and five years, respectively, instead of five and seven years, as provided in current law; and, provides that the process in 4(b) applies to an offense that would otherwise be subject to the process in 4(a) if the offense was subsequently dismissed or if the convicted person obtained a certification of rehabilitation or a pardon.

- 2) Makes it more difficult for resource family approval to be denied on the basis of criminal records. Specifically: provides that if a criminal records check indicates that a person has been convicted of a violent felony that is automatically disqualifying under existing law, the home approval must be denied unless the person has a family-like relationship with a child and is granted an exemption under this bill's provisions; provides that any criminal history of an applicant or other adults living in the home cannot be used as the sole basis to deny the approval if the applicant is a relative or NREFM, unless the county has evidence that is admissible in an administrative hearing to establish that the placement may pose a risk to the health and safety of a child; and, if the applicant or another adult in the home has been arrested for specified offenses or has a criminal conviction that is automatically disqualifying under existing law, provides that the applicant or other adult in the home bears the burden of showing the placement will not pose a risk to the health and safety of the child.
- 3) Authorizes a court to order placement of a child in the home of a relative or a NREFM, regardless of the status of the criminal records clearance or resource family approval, so long as the court finds that the placement does not pose a risk to the health and safety of the child. This applies to temporary placement of a child on an emergency basis, as well as placement of the child on a longer-term basis following the dispositional hearing to decide where the child will live.
- 4) Ensures more support is provided to relatives and NREFMs. Specifically: requires the child welfare agency to use reasonable efforts to assist relatives or NREFM in obtaining necessary items for the care of a child if the lack of resources, such as cribs and car seats, is the sole issue preventing emergency placement of the child with the relative or NREFM; clarifies, for the purposes of payment of support, that a relative or nonrelative extended caregiver with whom a child has been ordered to be placed by the court, unless the child has been temporarily placed as provided, meets the definition of an approved relative caregiver regardless of the status of any criminal exemption or resource

family approval; and, provides that a requirement that a household have the financial ability to ensure the stability and financial security of the family may be waived for relatives or NREFMs on a case-by-case basis.

- 5) Requires the Child Welfare Council to submit a report to the Legislature by January 1, 2023, regarding the resource family approval process and criminal records clearance, as provided.

Comments

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.”

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.

Dependency Court Process. The juvenile dependency court holds legal jurisdiction over a foster child or non-minor dependent (NMD). The juvenile dependency court is responsible for determining whether a child is safe and for making decisions about the care and control of the child. The court also orders the provision of

services to the child and biological parents through a variety of court hearings. At a dispositional hearing the judge decides: where and with whom the child should live (including whether the child can return home or be removed from their parent's custody); when, where, and how visitation between the child and their parent occurs; what services the child needs to be safe and healthy; and what services the parent needs in order to be reunified with their child.

This bill clarifies the juvenile dependency court's authority to place a child in the home of a relative or NREFM regardless of the status of any criminal exemption or resource family approval. The court would have to consider the county child welfare department's recommendation and determine that the placement does not pose a risk to the health and safety of the child. This applies to both temporary or emergency placements that occur before the disposition hearing and those placement decisions that occur after the disposition hearing.

Placement with Relatives. State and federal law include a preference to place children in out-of-home care with relatives. 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. Researchers have 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.¹ In support of this preference, a variety of recent legislative efforts encourage relatives to care for children in the CWS system. (NOTE: For more information on this, see the Senate Human Services Committee analysis of this bill.)

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 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. The RFA process allows the reviewing agency (CDSS or the county) to make considerations related to an 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.

¹ Arch Pediatr Adolesc Med. 2008;162(6):550-556. doi:10.1001/archpedi.162.6.550.

This bill makes a variety of changes that would facilitate juvenile dependency courts placement of foster youth with relatives and NREFMs. These changes are intended to remove barriers to relative placements that have apparently arisen out of the effort to streamline and make uniform RFA process. This bill also makes changes to requirements relating to resource families financial stability, when those requirements are a barrier to placing children with relatives and NREFMs.

Background Check Process for RFA. The RFA process includes a criminal record background check, which is the main subject of this bill. 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. (NOTE: For more information on this process, see the Senate Human Services Committee analysis or the Senate Judiciary Committee analysis.)

This bill makes several changes that are broadly aimed at facilitating the placement of foster youths with relatives and NREFMs who have criminal records but do not present a danger to the child. This bill, particularly as it relates to relatives and NREFMs, shifts the process for obtaining placement from a mechanistic system that categorically excludes broad swathes of people with criminal records to an individualized process that allows for a case-by-case determination of the person's fitness to care for the child, by introducing more flexibility with respect to criminal records clearance, resource family approval, and judicial determinations of placement. (NOTE: More information on the specifics can be found in the policy committee analyses mentioned above.)

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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- CDSS report staff costs of \$713,000 FY 2021-2022 and Ongoing Annual Costs - \$687,000 (General Fund)
- County social workers increased staff time to investigate and prepare for hearings and other potential mandated local costs. Following 2011 realignment, state-mandated local costs are not reimbursable, but instead must be funded by the state pursuant to Proposition 30.
- Juvenile Dependency Court—Unknown, workload cost pressures to the courts to for increased hearing time to make the court finding on risk. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. For illustrative purposes, the Governor's proposed 2021-2022 Budget would appropriate \$118.3 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. (General Fund-Trial Court Trust Fund)

SUPPORT: (Verified 5/20/21)

A New Way of Life Reentry Project (co-source)

Alliance for Children's Rights (co-source)

Children's Law Center (co-source)

County Welfare Directors Association of California (co-source)

Legal Services for Prisoners with Children (co-source)

Starting Over, Inc. (co-source)

Underground Scholars Initiative at UC Riverside (co-source)

ACLU California

All of Us or None Orange County

All of Us or None Riverside

Alliance for Boys and Men of Color

Anti-Recidivism Coalition

Asian Americans Advancing Justice - California

California Coalition for Women Prisoners

California Families Against Solitary Confinement

California United for a Responsible Budget

Californians for Safety and Justice

Center for Employment Opportunities

Children's Defense Fund-California
Children's Law Center of California
Communities United for Restorative Youth Justice
County Welfare Directors Association of California
CURE California
East Bay Community Law Center
East Bay Family Defenders
Ella Baker Center for Human Rights
Family Reunification, Equity, and Empowerment Project
Fathers and Families of San Joaquin
Fresno Barrios Unidos
Hillsides
If/When/How: Lawyering for Reproductive Justice
Initiate Justice
Inland Empire Fair Chance Coalition
John Burton Advocates for Youth
Legal Aid at Work
Legal Services for Prisoners with Children
Los Angeles Dependency Lawyers Inc.
National Center for Youth Law
Public Counsel
Re:Store Justice
Religious Coalition for Reproductive Choice California
Root & Rebound
Rubicon Programs
San Francisco District Attorney's Office
San Francisco Public Defender
SEIU California
Showing up for Racial Justice Contra Costa
Sigma Beta Xi, Inc.
Starting Over, Inc.
The Harriet Buhai Center for Family Law
The Place4Grace
Time for Change Foundation
Underground Scholars Initiative at UC Riverside
Universalist Unitarian Church of Riverside
Vista Del Mar Child and Family Services
Women's Foundation California
Young Women's Freedom Center

OPPOSITION: (Verified 5/20/21)

None received

Prepared by: Marisa Shea / HUMAN S. / (916) 651-1524
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**** **END** ****