

Date of Hearing: July 6, 2021

ASSEMBLY COMMITTEE ON JUDICIARY

Mark Stone, Chair

SB 354 (Skinner) – As Amended June 23, 2021

SENATE VOTE: 38-0

SUBJECT: PLACEMENT OF FOSTER CHILDREN: CRIMINAL BACKGROUND CHECKS

KEY ISSUE: SHOULD THE CRIMINAL BACKGROUND REVIEW PROCESS FOR PLACEMENT OF FOSTER CHILDREN WITH RELATIVES OR NONRELATIVE EXTENDED FAMILY MEMBERS BE MADE MORE FLEXIBLE SO THAT MORE CHILDREN ARE ABLE TO BE PLACED WITH LOVING FAMILY MEMBERS WHO MAY HAVE HAD A CRIMINAL RECORD, BUT WHO DO NOT PRESENT A CURRENT DANGER TO THE CHILDREN?

SYNOPSIS

When an abused or neglected child is taken from the custody of their parents, social workers are required to release a child temporarily to a responsible parent, or guardian, unless it is not safe to do so. Social workers may also release a child, in order of priority, into the custody of a relative, a nonrelative extended family member (NREFM) (defined as any adult caregiver who has established a familial or mentoring relationship with the child), or place the child in a licensed foster home or group home. Prior to placing a child in the home, the social worker must visit the home to ascertain the appropriateness of the placement and run a criminal records check on all persons over 18 years of age living in the home, or any other person who may have significant contact with the child, including those with a familial or intimate relationship with any person living in the home. If the criminal records check shows that a person has been convicted of certain crimes, mostly violent felonies, the child may not be placed in the home. If the person has been convicted of a crime for which there is a criminal records exemption, the child cannot be placed in the home unless the county does in fact grant the exemption.

California has long had a criminal background check process for childcare licensing and foster care placement. The federal Adam Walsh Child Protection and Safety Act of 2006 requires all states to comply with specified criminal background checks and restrictions. However, instead of harmonizing the federal requirements with California's existing background check procedures, the new federal rules were simply overlaid on top of the state rules, creating a complex set of overlapping and unduly restrictive rules and exemptions. (AB 2651 (Aghazarian), Chap. 701, Stats. 2008.) In 2018, the Legislature simplified and streamlined the exemption process, but still had a long list of non-exemptible crimes. (SB 213 (Mitchell), Chap. 733, Stats. 2018.) Since then, a state court of appeal has found that if a person has a parental relationship with the child, it is unconstitutional to automatically disqualify them for placement with the child if they or someone in their home has a non-exemptible crime. (In re C.P. (2020) 47 Cal.App.5th 17.) Instead, they must have an individualized determination of eligibility to live with the child.

This bill expands the criminal background clearance process to provide for individualized determinations for relatives and NREFMs to gain custody of foster children, provided it is safe to do so. The bill covers both the process for placing the child with the caregiver and the process for getting the caregiver's home approved through the Resource Family Approval (RFA)

process. The author states that the bill will remove barriers to placement of foster children with relatives by “creating more opportunities for children to be housed with relative caregivers regardless of a prior criminal conviction, provided that the conviction is not believed to endanger the child.” The bill is jointly sponsored by the Alliance for Children’s Rights, A New Way of Life Re-Entry Project, the Children’s Law Center, the County Welfare Directors Association of California, Legal Services for Prisoners with Children, Starting Over, Inc., and the Underground Scholar’s Initiative at UC Riverside, and is supported by a broad coalition of organizations. It has no known opposition. It passed the Human Services Committee last week on a vote of 7-0.

SUMMARY: Facilitates placement of foster youths with relatives and nonrelative extended family members (NREFMs) who have criminal records but do not present a danger to the child. Specifically, **this bill:**

- 1) Requires the California 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, and stratify the data by a variety of demographic data, including at a minimum race and income level.
- 2) Expands the scope of criminal records that are eligible for an exemption clearance process in order to allow foster children to be placed with a relative or NREFM by:
 - a) Making all non-exemptible crimes exemptible -- other than a felony conviction within the last five years for child abuse or neglect, spousal abuse, rape, sexual assault, homicide, or any other crime against a child, including child pornography -- subject to the existing exemption review process if the applicant, or any other adult living in the home, is seeking placement of a child with whom the applicant has a family-like relationship, the applicant is of present good character to justify granting an exemption, and placement with the relative or NREFM would not pose a health and safety risk to a child. Clarifies that the exemption only applies in the case of placement of that specific child (or children) and is not transferrable to the placement of a different child.
 - b) Adding the following to the factors that must be considered in the exemption review process: (i) other evidence of the applicant’s or person’s willingness and ability to provide a loving, safe, and stable home for children; and (ii) if the person is seeking approval as a resource family to provide care to a specific relative child, Department of Social Services (DSS) or other approving entity must also consider the wishes of the child and the strength of the existing bond between the person and the child.
 - c) Enlarging the scope of the process for granting a discretionary exemption by reducing the scope of crimes to apply to misdemeanor and felony convictions that occurred within the last three and five years, respectively, instead of five and seven years, as provided in current law.
 - d) Providing that the process for a mandatory exemption applies to an offense that would otherwise be subject to the discretionary exemption process if the offense was subsequently dismissed or if the convicted person obtained a certification of rehabilitation or a pardon.

- 3) Makes it more difficult for resource family approval to be denied on the basis of criminal records by:
 - a) Providing that if a relative or a NREFM has a family-like relationship with the child or the child has already been placed in the home of the relative or NREFM, as provided, resource family approval may not be denied 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;
 - b) Providing 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;
 - c) Providing that the criminal history of an applicant or other adults living in the home cannot be used as the sole basis to deny 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,
 - d) 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, providing 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; but
 - e) Regardless, providing that if the applicant or other adult in the home has a felony conviction within the last five years for child abuse or neglect, spousal abuse, rape, sexual assault, homicide, or any other crime against a child, including child pornography, resource family approval will not be granted; and
 - f) Clarifying that any approval based on exemptions granted pursuant to this bill is child specific.
- 4) Authorizes a court, after reviewing the temporary placement recommendations of the child welfare agency at the detention hearing, to use its independent judgment in evaluating whether 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, and the relative, NREFM, or other adult living in the home does not have a felony conviction within the last five years for child abuse or neglect, spousal abuse, rape, sexual assault, homicide, or any other crime against a child, including child pornography.
- 5) Allows a court, at the disposition hearing, to place the child with a relative or NREFM regardless of the status of any criminal exemption or resource family approval, provided the court determines that placement with the relative or NREFM does not pose a risk to the health and safety of the child and the relative, NREFM, or other adult living in the home does not have a felony conviction within the last five years for child abuse or neglect, spousal abuse, rape, sexual assault, homicide, or any other crime against a child, including child pornography.

- 6) If the sole issue preventing emergency placement of a child with a relative or NREFM is lack of resources, including but not limited to physical items such as cribs and car seats, requires the child welfare agency to use reasonable efforts to assist the relative or NREFM in obtaining the necessary items within the existing available resources. Requires DSS to work with counties and stakeholders to issue guidance regarding reasonable efforts requirements.
- 7) 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.
- 8) Provides that a requirement that a resource family 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.

EXISTING LAW:

- 1) Provides that a minor may be removed from the physical custody of their parents and become a dependent of the juvenile court as the result of abuse or neglect, as specified. (Welfare & Institutions Code Section 300. Unless stated otherwise, all further statutory references are to that code.)
- 2) Requires, at the detention hearing, that the court take certain steps to evaluate the case, determine whether the child can be returned home safely, and, if not, to ensure the child is placed in an appropriate placement, with priority consideration for relatives and NREFMs. 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 a criminal record clearance. Prohibits temporary placement if a violent felony specified in 5) and 6), below, is found. (Sections 309, 319, 361.3, 361.4.)
- 3) Establishes the resource family approval process, which requires, among other things, a criminal record clearance for each applicant and adult residing in the home. (Section 16519.5 (d).)
- 4) Prohibits DSS from issuing a criminal record clearance to a person arrested for certain violent felonies against an individual unless DSS 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. (Health & Safety Code Section 1522 (g).)
- 5) Provides that non-exemptible crimes are essentially any violent felony, including enumerated crimes against the individual, including: physical and sexual assault, rape, child abuse or neglect, lewd or lascivious acts, failure to comply with sex offender registration requirements, elder abuse; murder or voluntary manslaughter, robbery, arson, kidnapping, carjacking, extortion, threats to victims or witnesses, burglary, misuse of explosives, weapons of mass destruction; and various listed attempted crimes or felonies punishable by

death or life imprisonment; certain unprofessional conduct by healing arts licensees, torture, poisoning; and unlawful use of a deadly weapon. (*Ibid.*)

- 6) Under federal law, the following types of felonies, which overlap with some of the non-exemptible crimes described in 5), above, are specifically required to be non-exemptible pursuant to Title IV federal funding requirements:
 - a) 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
 - b) Within the last five years, physical assault, battery, or a drug- or alcohol-related offense. (*Id.*; 42 U.S.C. Section 671 (a)(20).)
- 7) 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 DSS 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. When granting an exemption for such a crime, DSS or the approving entity must consider all reasonably available information, including:
 - i) The nature of the crime or crimes;
 - ii) The period of time since the crime was committed;
 - iii) The number of offenses;
 - iv) Circumstances surrounding the commission of the crime indicating the likelihood of future criminal activity;
 - v) Activities since conviction, including employment, participation in therapy, and education;
 - vi) Whether the person convicted has successfully completed probation or parole, obtained a certificate of rehabilitation, or been granted a pardon by the Governor;
 - vii) Any character references or other evidence submitted by the applicant; and
 - viii) Whether the person convicted demonstrated honesty and truthfulness concerning the crime or crimes during the application and approval process and made reasonable efforts to assist DSS in obtaining records and documents concerning the crime or crimes.
 - b) If the crime does not fall under 5) or 6), above, or under a), then DSS 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. (Health & Safety Code Section 1522 (g).)
- 8) Establishes the California Child Welfare Council (Council) to serve as an advisory body responsible for improving the collaboration and processes of the multiple agencies and the courts that serve the children and youth in the child welfare and foster care systems, and to monitor and report the extent to which child welfare and foster care programs and the courts are responsive to the needs of children in their joint care. Requires the Council to issue

advisory reports, no less frequently than annually, to the Governor, the Legislature, the Judicial Council, and the public. (Section 16540.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: When an abused or neglected child is taken from the custody of their parents, social workers are required to release a child temporarily to a responsible parent, or guardian, unless it is not safe to do so. Social workers may also release a child, in order of priority, into the custody of a relative, a nonrelative extended family member (NREFM) (defined as any adult caregiver who has established a familial or mentoring relationship with the child), or place the child in a licensed foster home or group home. Prior to placing a child in the home, the social worker must visit the home to ascertain the appropriateness of the placement and run a criminal records check on all persons over 18 years of age living in the home, or any other person who may have significant contact with the child, including those with a familial or intimate relationship with any person living in the home. If the criminal records check shows that a person has been convicted of certain crimes, mostly violent felonies, the child may not be placed in the home. If the person has been convicted of a crime for which there is a criminal records exemption, the child cannot be placed in the home unless the county does in fact grant the exemption.

California has long had a criminal background check process for childcare licensing and foster care placement. The federal Adam Walsh Child Protection and Safety Act of 2006 requires all states to comply with specified criminal background checks and restrictions. However, instead of harmonizing the federal requirements with California's existing background check procedures, the new federal rules were simply overlaid on top of the state rules, creating a complex set of overlapping and unduly restrictive rules and exemptions. However, instead of harmonizing the federal requirements with California's existing background check procedures, the new federal rules were simply overlaid on top of the state rules, creating a complex set of overlapping and unduly restrictive rules and exemptions. (AB 2651 (Aghazarian), Chap. 701, Stats. 2008.) In 2018, the Legislature simplified and streamlined the exemption process. (SB 213 (Mitchell), Chap. 733, Stats. 2018.) Since then, a state court of appeal has found that if a person has a parental relationship with the child, it is unconstitutional to automatically disqualify them for placement with the child if they or someone in their home has a non-exemptible crime. (*In re C.P.* (2020) 47 Cal.App.5th 17.) Instead, they must have an *individualized* determination of eligibility to live with the child. Following that case, this bill expands that process to provide for individualized determinations for relatives and NREFMs to gain custody of foster children, provided it is safe to do so.

In support of the bill, the author states:

The state of California has over 60,000 children in the foster care system, and these children are disproportionately 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 foster care 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 many barriers to being reunited with their parents or relatives.

Children do far better when they are living with family members or relatives rather than in institutional or non-familial foster care settings. Research suggests that children housed with family members or relatives have better attachments to their caregivers and suffer fewer

behavioral and educational challenges. Since 2015, California has worked toward implementing Continuum of Care Reform recommendations, emphasizing home-based family placements of foster children whenever possible and reducing the use of congregate care.

SB 354 seeks to remove barriers to relative placement in the Resource Family Approval process by creating more opportunities for children to be housed with relative caregivers regardless of a prior criminal conviction, provided that the conviction is not believed to endanger the child.

Preference for placement with relatives. Studies have demonstrated significant benefit to children in the child welfare system who are placed with relatives (or NREFM) rather than with strangers in foster homes or in group care. Writing in the National Journal for the Court Appointed Special Advocates for Children (CASA), retired Santa Clara Juvenile Court Judge Len Edwards underscored the benefits of placing children with relatives:

- Children in relative care tend to be just as safe as, or safer than, children placed in foster care.
- Relative placements provide more stability than placement with foster families, and if the child has to move, it is likely he or she will move from the home of one relative to another.
- Siblings more often remain together in relative care, and are more likely to visit one another even if they reside in separate relative homes.
- Relative caregivers are more likely to continue the ties with the child's birth family.
- Children in relative care are more likely to remain connected to their community, including their school.
- Relative caretakers facilitate parent-child visitation more easily since the caregivers will likely favor reunification and will be less likely than foster parents to compete with the parents for permanent custody of the child.
- Relatives are more likely to invest time and care for a child who shares a blood tie. This includes a willingness to care for the child for as long as needed.
- Placement with relatives will generally be less traumatic than placement in an unfamiliar home because the children will be living with someone they know and trust, particularly if the non-relative differs racially or ethnically from the child.
- Placement with relatives supports the transmission of a child's family identity, culture, and ethnicity.
- Placement with relatives eliminates the unfortunate stigma that many foster children experience.
- Children fare better in relative care than in foster care along numerous axes.
- The child placed with relatives knows [their] own family, sees family resemblances, and understands how [they] fit[] into it. (Judge Len Edwards, *Examining the Benefits and Challenges of Placing Children with Relatives* (CASA, Nov. 2011).)

Safety is paramount when placing foster children, but law and policy favor placement of children with relatives or non-relative extended family members. Obviously, when children are removed from their parents due to abuse or neglect, providing them a safe and secure place to live is paramount. That includes making sure that the residents of the placement home do not pose a danger to the children. California does so, in part, through required criminal background checks of household members. However, placing children in foster care placement with

strangers, either while awaiting required background checks and clearances for relatives or NREFMs or permanently if relatives or NREFMs cannot be cleared, can harm children already suffering from the underlying abuse or neglect and from being pulled from their homes, their friends, and their families. This bill seeks to make it easier to place foster children with relatives and NREFMs when doing so can be done safely.

Under current law, if a child brought into the custody of the county is not returned to their parent or guardian, the social worker must initiate an assessment of the suitability of any able and willing relative or nonrelative extended family member who is available and requests temporary placement of the child. (Section 309 (d)(1).) Preferential consideration must first be given to the home of any relative seeking placement of the child. (Section 361.3 (a).) If the child is not placed with a relative, consideration should also be given to placing the child with a “nonrelative extended family member,” defined as an adult caregiver who has an established family relationship with the child or a familial or mentoring relationship with the child that has been verified by the social services agency. (Section 362.7.)

Such assessments must be initiated while the detention hearing is pending and while the dispositional hearing is pending, and must include, among other things, a criminal records check. (Sections 309 (d)(2), 361.4 (a)(2).) If the check indicates that the relative, NREFM, or other adult living in the home has been convicted of a crime for which the social services agency cannot grant an exemption under Health and Safety Code Section 1522, the child cannot be placed in the home. (Health & Safety Code Section 1522 (g)(2)(A).) If, instead, it is a crime for which the child welfare agency may grant an exemption, the child may be placed in the home only if certain criteria are met. (*Id.* at (g)(2); Section 361.4 (b).) The county welfare agency must then evaluate or deny the home approval pursuant to Section 16519.5, which establishes a process for approving foster families, including relatives and NREFM, subject to the criminal background check clearance.

A recent appellate case holds that automatic disqualification for a criminal record is unconstitutional if the applicant has a parental relationship with the child. A California Court of Appeal recently held that if an applicant for RFA has a parental relationship with the child, it is unconstitutional for the applicant to be automatically disqualified on the basis of a conviction for a non-exemptible crime. Instead, due process requires that the applicant receive an individualized determination as to their eligibility. (*In re C.P.* (2020) 47 Cal.App.5th 17.) In that case, a child who had been removed from his mother’s custody in 2017 was living in a group home while his grandparents, with whom he had previously lived, attempted to apply to have him placed in their care. Over the course of two years, the grandparents maintained close contact with the child and were gradually granted more time with the child, including overnight and weekend visitation. However, during the resource family approval process, a criminal background check revealed that the grandfather had a 28-year-old misdemeanor conviction under Penal Code Section 273d, which applies to any person who willfully inflicts injury upon a child. The grandfather had pleaded no contest, and was sentenced to probation and required to take anger management classes after he was accused of pushing his wife and son during, or while trying to walk away from, an argument. The resources family application was denied because a Penal Code Section 273d conviction fell into the category of non-exemptible crimes.

The appellate court concluded that this absolute bar on placement was unconstitutional, as applied to the grandparents, because they had a parental relationship with the child, and remanded to the lower court to make factual findings as to the nature of the relationship.

It is well-established that parents have a constitutionally protected liberty interest in making decisions about the care, custody, and control of their children. (*Miller v. California Dept. of Social Services* (9th Cir. 2004) 355 F.3d 1172, 1175.) While this does not extend specifically to grandparents, it does apply more generally to anyone with whom the child has developed a parental relationship, grandparents included. (*In re C.P.*, *supra*, 47 Cal.App.5th at 28.) The court cited cases that reasoned that this right is based both on the rights of the caretakers, but also the right of the child to maintain familial relationships. (*Ibid.*) The court stated:

A permanent, irrebuttable statutory presumption regarding certain convictions—no matter what the underlying facts, no matter how long ago, and no matter the characteristics of the parent apart from the conviction—may not, consistent with the California State and United States Constitutions, absolutely disqualify an adult who shares a parental bond with a child from ever having that child placed in his or her care. Due process principles require, at the least, an individualized, case-by-case analysis, rather than the placement of an adult with a parental relationship in a category as broad as the one in which grandfather has been placed. The prohibition here encompasses even, for instance, very old misdemeanor convictions where a child was not physically harmed. As applied, the absolute bar at issue may work an unreasonable government interference with parental rights. (*Id.* at 29.)

This bill, consistent with In re C.P., expands the scope of criminal records that are eligible for an exemption for relatives and NREFMs, by allowing instead for an individualized determination. Consistent with *In re C.P.*, this bill, makes it easier for relatives or NREFMs to get placement of a child, even if they or another adult living in the home has a non-exemptible criminal conviction. (That particular placement may not qualify for federal funding under 42 U.S.C. Section 671 (a)(20), but would not jeopardize the state's general receipt of federal child welfare funding since the state would still have the necessary criminal background check process in place.)

However, to protect the child, certain crimes remain non-exemptible: a felony conviction within the last five years for child abuse or neglect, spousal abuse, rape, sexual assault, homicide, or any other crime against a child, including child pornography. If a person recently committed a felony that involves violence or abuse against a child or intimate partner, or that otherwise directly reflects on their fitness to have a child in their custody, the likelihood that they will be found suitable for placement is extremely low. A serial child abuser going through the application process is not going to get custody of a child, regardless of the closeness of their relationship. Thus, the continuation of a narrow set of non-exemptible felonies that are recent, egregious, and violent is arguably consistent with *In re C.P.* because these felonies are, by themselves, evidence of the current danger of such a placement to the child. Contrast that to the decades old misdemeanor conviction in *In re C.P.*

With that limited child safety exception, this bill makes all other currently non-exemptible crimes exemptible, subject to the existing exemption review process, if the applicant is seeking placement of a child with whom they have a family-like relationship, the applicant is of present good character to justify granting an exemption, and placement with the relative or NREFM would not pose a health or safety risk to a child. As recently amended, the bill clarifies that the exemption only applies in the case of placement of that specific child or children and is not transferrable to the placement of a different child.

This bill also expands the scope of the exemption clearance process by expanding the factors that the child welfare agency must consider. Under existing law, when granting an exemption for an exemptible crime, DSS or the approving entity must consider all reasonably available information, including the nature of the crime committed; the period of time since the crime was committed; the number of offenses; the circumstances surrounding the commission of the crime indicating the likelihood of future criminal activity; activities since conviction, including employment, participation in therapy, and education; 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; and whether the person convicted demonstrated honesty and truthfulness concerning the crime or crimes during the application and approval process and made reasonable efforts to assist DSS in obtaining records and documents concerning the crime or crimes. (Health & Safety Code Section 1522 (g).)

This bill adds two additional factors that must be considered in the exemption review process. They are:

- Other evidence of the applicant's or person's willingness and ability to provide a loving, safe, and stable home for children; and
- The wishes of the child and the strength of the existing bond between the person and the child, if the person is seeking approval as a resource family to provide care for that specific child.

Additionally, this bill enlarges the scope of offenses that are eligible for the existing simplified exemption review process by applying it to: (1) qualifying misdemeanor convictions that occurred more than three years ago and qualifying felony convictions that occurred more than five years ago, instead of the respective five and seven year periods applicable under existing law; and (2) an offense that would be subject to the ordinary exemption process but that was dismissed or for which the convicted person obtained a certification of rehabilitation or a pardon.

This bill also makes it harder to deny home approval through the Resource Family Approval process for those with criminal records. The bill makes it more difficult for resource family approval (RFA) to be denied on the basis of prior criminal convictions in several important ways. First, the bill provides that if a relative or a NREFM has a family-like relationship with the child or the child has already been placed in the home of the relative or NREFM, as provided, resource family approval may not be denied 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. Second, the bill provides that if a criminal records check indicates that a person has been convicted of a violent felony that is automatically disqualifying under current 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. Third, the criminal history of an applicant or other adults living in the home cannot be used as the sole basis to deny 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. However, 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, the bill requires that the applicant or other adult in the home bear the burden of showing the placement will not pose a risk to the health and safety of the child.

There are, however, two limitations on the above expansion to the RFA process to help protect children from harm. First, if the applicant or other adult in the home has a felony conviction within the last five years for child abuse or neglect, spousal abuse, rape, sexual assault, homicide, or any other crime against a child, including child pornography, approval cannot be granted. Second, recent amendments to the bill clarify that any approval granted by these changes is child specific, based on the close relationship between the applicants and the child, and does not approve the home for any other children.

Taken together, these changes to the law should help more families be approved and get custody of children in foster care and provide them with loving homes, while still ensuring that children are safe from harm.

The bill also authorizes a court to order placement with a relative or NREFM regardless of criminal clearance or resource family approval status, unless doing so endangers the child.

Under existing law, “[a] juvenile court exercises its independent judgment when it is responsible for making certain decisions, as in the placement of a dependent child before the termination of parental rights and referral for adoption.” (*In re R.T.* (2015) 232 Cal.App.4th 1284, 1307 (citation omitted).) “But the juvenile court is limited to determining whether a social services agency abused its discretion when the agency is vested by law with ‘the sole authority to make a particular determination.’” (*Id.* at 1307-08 (citation omitted).) The decision to grant a criminal records exemption is an executive function that lies exclusively with the child welfare agency. A court can only review an agency’s placement decision under an abuse of discretion standard, which is highly deferential to the agency’s decision. (*See id.* at 1307.)

This bill expands the powers of the court by authorizing a court, after reviewing the temporary placement recommendations of the child welfare agency at the detention hearing, to use its *independent judgment* in evaluating whether 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. The bill also allows a court, at the disposition hearing, to place the child with a relative or NREFM regardless of the status of any criminal exemption or resource family approval, provided the court determines that placement with the relative or NREFM does not pose a risk to the health and safety of the child and the relative, NREFM, or other adult living in the home does not have a felony conviction within the last five years for child abuse or neglect, spousal abuse, rape, sexual assault, homicide, or any other crime against a child, including child pornography.

These provisions allow the court, on a case-by-case basis, to make its own decision on where to place the child if there is a family relationship. However, this judicial independence is not unlimited. As with all other provisions of the bill, the court cannot place the child if the relative, NREFM, or other adult living in the home has a felony conviction within the last five years for child abuse or neglect, spousal abuse, rape, sexual assault, homicide, or any other crime against a child, including child pornography.

Assistance for low-income relatives and NREFM. To help ensure that being poor does not keep foster children from loving family members, this bill does two things. First, it allows the county child welfare agency to waive, on a case-by-case basis, the requirement that a resource family applicant demonstrate the financial ability to ensure the stability and financial security of the family for relatives and NREFMs. Second, the bill requires the child welfare agency to use

reasonable efforts to assist the relative or NREFMs in obtaining necessary items, such as cribs or car seats, if the sole issue preventing an emergency placement of a child is a lack of resources. DSS is required to work with counties and stakeholders to issue guidance regarding what “reasonable efforts” means.

Requires a report on the resource family approval process and criminal background checks.

The bill additionally requires the California Child Welfare Council to submit a report to the Legislature by January 1, 2023 on: (1) the number of resource family applicants who applied for resource family approval to care for a relative child and were denied a criminal records exemption through the standard exemption process; (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 non-exemptible crime; and (3) the number of administrative appeals and the results of those appeals. The bill would further require the California Child Welfare Council to stratify the data by a variety of demographic data, including, at a minimum, by race and income level. Having access to this information should allow the Legislature to better assess any remaining challenges that relatives and NREFMs with a criminal history have with the resource family approval process and help inform future policy decisions.

ARGUMENTS IN SUPPORT: A broad coalition of advocates for children and families write:

Current law still contains significant barriers to children staying with family members or relatives that have a criminal conviction. Relatives seeking criminal history exemptions frequently face prolonged administrative and appeal processes that frequently place their requests for placement in seemingly indefinite uncertainty.

Research suggests that children experience fewer placement changes in kinship care. In comparison to children in non-familial foster care, children housed with family members or relatives have better attachments to their caregivers and fewer behavioral and school-related issues. Temporarily housing children with family members or relatives is a necessary alternative to institutional and non-familial foster care for the benefit of the child’s growth and development. It provides children with greater stability than foster care with evidence also showing that sustained contact with children and family reunification post-incarceration lowers recidivism rates for incarcerated parents.

Pending Legislation: AB 677 (Holden) would require DSS to convene a working group to make recommendations and propose revised regulations to expedite the criminal record exemption process. The bill would also require DSS to post information on its website concerning applications for criminal records exemptions. The bill would prohibit arrests and criminal proceedings that do not result in a denial of clearance or a criminal records exemption from being the basis of a suspension or revocation of a license of a care facility. This bill was held on the suspense file in the Assembly Appropriations Committee.

Prior Legislation: SB 213 (Mitchell), Chap. 733, Stats. 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 presently of good character.

AB 2651 (Aghazarian), Chap. 701, Stats. 2008, conformed California’s criminal record exemption process to the federal Adam Walsh Child Protection and Safety Act of 2006.

REGISTERED SUPPORT / OPPOSITION:

Support

A New Way of Life Reentry Project (co-sponsor)
Alliance for Children's Rights (co-sponsor)
Children's Law Center of California (co-sponsor)
County Welfare Directors Association of California (co-sponsor)
Legal Services for Prisoners with Children (co-sponsor)
Starting Over, Inc. (co-sponsor)
Underground Scholars Initiative at UC Riverside (co-sponsor)
ACLU California Action
All of Us or None
Anti-Recidivism Coalition
Blameless and Forever Free Ministries
California Coalition for Women Prisoners
California Families Rise
California for Safety and Justice
Californians United for a Responsible Budget
CASA of Los Angeles
Communities United for Restorative Youth Justice
Community Legal Services in East Palo Alto
East Bay Community Law Center
Fresno Barrios Unidos
Harriett Buhai Center for Family Law
Hillsides
Improve Your Tomorrow, Inc.
Initiate Justice
Inland Empire Fair Chance Coalition
Junior League of San Diego
Los Angeles Dependency Lawyers, Inc.
MILPA (Motivating Individual Leadership for Public Advancement)
Public Counsel
Re:store Justice
Religious Coalition for Reproductive Choice California
Root & Rebound
Rubicon Programs
San Francisco District Attorney's Office
San Francisco Human Services Agency
Sigma Beta Xi, Inc. (SBX Youth and Family Services)
SURJ (Showing Up for Racial Justice) Contra Costa County
Vista Del Mar Child and Family Services
Women's Foundation California

Opposition

None on file

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