

Date of Hearing: August 26, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

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

Policy Committee:	Human Services	Vote:	7 - 0
	Judiciary		10 - 0

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill allows the California Department of Social Services (CDSS), as part of the resource family approval (RFA) process, to grant criminal records exemptions on a case-by-case basis for otherwise non-exemptible crimes to relatives or nonrelative extended family members (NREFM) of children placed in the child welfare system, under specified circumstances. This bill additionally permits the court to authorize placement of children with a relative and NREFM in certain circumstances, regardless of the status of any criminal records exemption or RFA, among other changes. Specifically, this bill:

- 1) Authorizes CDSS to grant a criminal records exemption for otherwise non-exemptible crimes for a relative, NREFM or any other adult living in the home who has been convicted of these offenses if the applicant, or any other adult living in the home, is (a) seeking placement of a specific child with whom the applicant has a family-like relationship, (b) is of present good character, (c) placement with the relative or NREFM would not pose a health and safety risk to a child and (d) the applicant or other adult 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.
- 2) Clarifies that the exemption described in (1) above applies only in the case of placement of that specific child (or children) and is not transferrable to the placement of a different child.
- 3) Requires the court, in certain circumstances, to use its independent judgment in evaluating whether to order temporary or emergency placements of children with relatives or NREFMs, and allows the court to place the child with a relative or NREFM regardless of the status of any criminal exemption or RFA, provided the court determines 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 specified crimes.
- 4) Prohibits a county from denying RFA if a relative or NREFM has a family-like relationship with a child or a child is already placed in the home of the relative or NREFM, unless the county has evidence to establish the placement poses a risk to the child's health and safety.
- 5) Expands eligibility for the Approved Relative Caregiver (ARC) funding program to allow a relative or NREFM with whom a child has been ordered to be placed by the court to meet the definition of an approved relative caregiver regardless of the status of any criminal records exemption or RFA.

- 6) Requires a county welfare department, if the sole issue preventing emergency placement of a child with a relative or NREFM is lack of resources, including items such as cribs and car seats, to use reasonable efforts to assist the relative or NREFM in obtaining the necessary items.
- 7) Allows the requirement that a resource family household have the financial ability to ensure the stability and financial security of the family to be waived for relatives or NREFMs on a case-by-case basis.
- 8) Requires the California Child Welfare Council (CCW Council) to submit a report to the Legislature by January 1, 2023, detailing specified information and demographic data related to criminal history and the RFA process.

FISCAL EFFECT:

- 1) CDSS estimates costs of \$713,000 (General Fund (GF)) in the first year, and \$687,000 (GF) annually thereafter, for five staff positions to process an increased number of criminal records exemptions, and costs of \$15,600 (GF) to make related changes to the Guardian System.
- 2) CDSS estimates one-time costs of \$465,000 (GF) to add required data points to the CARES system necessary to meet the CCW Council reporting requirements, and one-time costs of approximately \$7.3 million (GF) for 41 full time equivalent (FTE) staff positions statewide, for counties to compile and submit information for the CCW Council report. CDSS indicates the information required for the report is not currently collected in any statewide system.
- 3) CDSS estimates ongoing annual losses of Title IV-E assistance funds resulting from cases that would otherwise be eligible for federal Aid to Families with Dependent Children-Foster Care (AFDC-FC) support who are placed with a relative or NREFM granted a criminal records exemption pursuant to this bill that does not align with federal law. The potential caseload is unknown, but the loss would need to be replaced with \$30,417 (GF) per 100 cases per month, or \$365,000 (GF) per year.
- 4) CDSS estimates, for the same federal non-compliance reason as in (3) above, ongoing indirect administration costs of an unknown amount, but likely in the tens of millions of dollars (GF), due to the impact on the federal discount rate calculation (percent of the total foster care caseload eligible for federal funding). Annual statewide administrative expenditures are in the low billions of dollars. The annual impact of a shift of a few hundred cases would mean a decrease of federal Title IV-E administrative funds in the millions of dollars. For example, the loss of federal Title IV-E administration funds associated with a 1% decline (which reflects a reduction of 529 cases from Title IV-E eligible to non-Title IV-E eligible) would be approximately \$13.4 million annually.
- 5) CDSS estimates costs of an unknown amount, but likely in the tens of thousands of dollars (GF) annually, to the extent this bill results in criminal records exemptions for relatives or NREFMs who are registered sex offenders (RSOs) and, thus, require additional RSO investigations during the RFA process. The potential increase in RSO investigations is unknown, but the cost of a 10% increase in RSOs with regular contact with clients, or 24 additional RSO investigations, is approximately \$54,000 GF.

- 6) CDSS estimates costs of an unknown amount, but likely near \$1 million (GF) annually, to the ARC assistance payment program for increased caseload resulting from the changes to the criminal records exemptions. The potential increase in ARC cases is unknown, but the cost per 100 cases is estimated to be up to \$106,344 (GF) per month and \$1.3 million (GF) per year. The ARC program uses 100% GF to fund the difference between the TANF payment provided to relative caregivers of nonfederally eligible FC children, and the higher Home Based Family Care rate paid to relative caregivers of federally eligible children.
- 7) Workload cost pressures of an unknown amount to the Juvenile Dependency Court 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 GF to increase the amount appropriated to backfill for trial court operations. (GF-Trial Court Trust Fund)

COMMENTS:

- 1) **Purpose.** This bill seeks to facilitate placement of foster youth with relatives and NREFMs, regardless of a prior criminal conviction, provided the conviction does not endanger the child.
- 2) **Background.** California's child welfare services (CWS) system is intended to protect children from abuse and neglect, provide for their health, safety and overall wellbeing and to preserve familial ties whenever possible. When a child is identified as being at risk of abuse or neglect, county juvenile courts hold legal jurisdiction and the CWS system appoints a social worker to ensure the needs of the child are met. When a youth is removed from the custody of their parents and placed in the CWS system, county social workers are required to locate any relatives or NREFMs who may serve as caregivers to the youth in order to maintain familial bonds wherever possible. As of January 1, 2021, there were 59,716 youth placed in California's CWS system; 34% (20,405) youth were placed with relatives or NREFMs.
- 3) **Criminal background checks.** Existing law requires applicants, including resource family applicants, licensees, adult residents, certain volunteers and employees of community care facilities, who have contact with clients to undergo criminal background checks and obtain criminal record clearance or exemption, if applicable. The background check requires each of these individuals to submit fingerprints to the Department of Justice (DOJ), as well as sign a declaration under penalty of perjury regarding any prior criminal convictions.

For an individual without a criminal history, DOJ forwards a clearance notice to the applicant or licensee, and to the Care Provider Management Bureau (CPMB) of the Community Care Licensing Division (CCLD) within CDSS. If an individual has a criminal history, DOJ sends a record transcript to CPMB, detailing the person's arrests and convictions. If the crimes meet the criteria necessary to qualify for an exemption, pursuant to current law, CPMB sends an exemption notification letter to the applicant for licensure and others. An exemption is required when an individual has been convicted of any crime other than a minor traffic violation.

SB 213 (Mitchell), Chapter 733, Statutes of 2017, streamlined the criminal background check process for prospective foster and adoptive parents. Specifically, SB 213 established 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. Non-exemptible crimes include, among others, felony convictions for murder, kidnapping, sexual assault, possession of child pornography, sexual exploitation of a child, elder or dependent abuse and arson, among others, and a felony conviction within the past five years for physical assault, battery or drug- or alcohol-related offense.

- 4) **Appellate Court Decision.** On March 26, 2020, the California Fourth District Court of Appeals ruled on a case involving placement of a child in the CWS system with his grandparents (In re C.P., 47 Cal. App. 5th 17, 2020). At the time of removal, the child lived in the home of the child's grandparents. The parental rights of the mother were terminated and the grandparents sought approval as a resource family. RFA was denied by the juvenile court because the grandfather had a conviction for a non-exemptible crime from 1991. The grandfather demonstrated the steps he had taken to be rehabilitated and the child expressed a desire to live with his grandparents. The Court of Appeals ruled that the absolute statutory bar on the placement of the child with his grandparents, with whom the child had a pre-existing, established relationship, was unconstitutional if the grandparents could establish that they have a parental relationship with the child, not just a grandparental relationship.

This bill responds to the Court of Appeals' decision by permitting, but not requiring, CDSS to grant exemptions to non-exemptible crimes for a relative or NREFM, and any other adult living in the home if a family-like relationship exists, the applicant is of good character, placement does not pose a health or safety risk to the child and the applicant does not have a felony conviction within the last five years for specified crimes.

- 5) **Related Legislation.** AB 677 (Holden), of this legislative session, requires CDSS to convene a working group to make recommendations and propose revised regulations to expedite the criminal record exemption process, among other items. AB 677 was held on this Committee's Suspense File.