
UNFINISHED BUSINESS

Bill No: SB 354
Author: Skinner (D), et al.
Amended: 9/1/21
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

SENATE FLOOR: 38-0, 5/28/21

AYES: Allen, Archuleta, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

NO VOTE RECORDED: Atkins, Limón

ASSEMBLY FLOOR: 49-0, 9/10/21

(ROLL CALL NOT AVAILABLE)

SUBJECT: Foster youth: relative placement

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

DIGEST: This bill adopts changes to the criminal background check process during the resource family approval (RFA) process for relatives of children placed in the child welfare system; permits the court to authorize placement of children with relatives in certain circumstances, regardless of the status of any criminal exemption or RFA; and, requires, no later than January 1, 2024, the California Department of Social Services (CDSS) to submit a report to the Legislature related to criminal record exemptions as specified.

Assembly Amendments require CDSS, instead of the Child Welfare Council, to submit a report to the Legislature, as provided; clarify the application of previously non-exemptible crimes to apply only to the placement of a specific child or children, and prohibit the exemption from being transferable for the placement of another child or children, as specified; ensure the application of the provisions of this bill to tribally approved homes, as appropriate; and, clarify that state funding for the placement of a child is permissible even where certain federal funding may be disallowed under the changes provided by this bill. The amendments also add language from AB 366 (B. Rubio) and SB 584 (Jones) to avoid chaptering out conflicts.

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) Requires, no later than January 1, 2024, CDSS to submit a report to the Legislature that includes certain data related to criminal background checks and RFA, as specified.
- 2) Expands the list of crimes for which CDSS may grant a criminal records exemption to a relative, as specified, allowing CDSS or another approving entity to grant an exemption for a relative and any other adult living in the home who has been convicted of these offenses if certain criteria are met, as specified.
- 3) Declares that exemptions to crimes that were previously non-exemptible, as proposed by the provision of this bill, only apply to the placement of a specific child or children, and, further, prohibits the exemption from being transferable for the placement of another child or children, as specified.
- 4) Makes changes to the criteria upon which CDSS may grant an exemption from disqualification to a foster care provider, resource family applicant, a tribally approved home applicant, a respite care provider or any individual subject to the background check requirements as specified.
- 5) Expands the list of criteria that CDSS is required to consider when granting an exemption for certain crimes, as specified.
- 6) Requires, after reviewing the placement recommendation of the county welfare department, the court to use its independent judgment in evaluating whether to order a temporary placement of a child in the home of a relative. Further, permits the court to order the temporary replacement regardless of the status of any criminal exemption or RFA if certain conditions are met, as specified.
- 7) Permits, when determining the placement of a child who is adjudged a dependent of the court, if the court determines that placement with a relative does not pose a risk to the health and safety of the child, as specified.
- 8) Requires, in instances where the county welfare department has considered placement with a relative, as specified in current law, and after reviewing the placement recommendation of the county welfare department, the court to use its independent judgment in evaluating whether to order the placement of a child in the home of a relative, and, further, permits the court to order a temporary placement regardless of the status of any criminal exemption or RFA if the court finds that the placement does not pose a risk to the health and safety of the child, as specified.

- 9) Permits the emergency placement of a child to be made in instances where information obtained through the California Law Enforcement Telecommunications System (CLETS) indicates that the individual has been convicted of certain crimes when a criminal record exemption has been granted, as specified.
- 10) Expands eligibility for emergency caregiver payments, as defined in current law, to include caregivers with whom a child is placed on an emergency basis pursuant to the provisions of this bill.
- 11) Adopts a number of changes to the RFA process, as specified.
- 12) Adds language from AB 366 (B. Rubio) and SB 584 (Jones), both of the current legislative session, to avoid chaptering out conflicts.
- 13) Makes technical and conforming changes.

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.”

Emphasis on placement with relatives. It has long been the goal of the CWS system to preserve familial ties whenever possible. Under certain circumstances, family maintenance services are provided to families in order to prevent the removal of children from their parents’ home, including family therapy, parenting classes, or substance use treatment. However, in instances 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 who may serve as caregivers to

the youth. When a relative agrees to become a caregiver, it is often done on an emergency basis; as such, these emergency caregivers are not yet approved as resource families, and therefore do not receive many of the supports and services afforded to caregivers approved through the RFA process, including foster care payments, which help provide for the needs of foster youth. Still, in recent years, funding has been allocated to alleviate financial strains on relatives who care for children prior to being approved as resource families; in 2018, AB 1811 (Committee on Budget), Chapter 35, Statutes of 2018, permitted, for fiscal year 2019-20 and beyond, payments to be made to emergency caregivers through the Temporary Assistance to Needy Families Emergency Assistance Program. Of the 59,716 youth in the CWS system on January 1, 2021, 34% (20,405) youth were placed with relatives or nonrelative extended family members.

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.

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 Assembly Appropriations Committee on August 26, 2021:

- 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.
- 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.
- 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.

- 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.
- 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)

SUPPORT: (Verified 9/9/21)

A New Way of Life Reentry Project (co-source)
 Alliance for Children's Rights (co-source)
 Children's Law Center of California (co-source)
 County Welfare Directors Association of California (co-source)
 Starting Over, Inc. (co-source)
 Underground Scholars Initiative at UC Riverside (co-source)
 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
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 Contra Costa County
Vista Del Mar Child and Family Services
Women's Foundation California

OPPOSITION: (Verified 9/9/21)

None received

Prepared by: Marisa Shea / HUMAN S. / (916) 651-1524
9/10/21 17:45:55

**** **END** ****