

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 1283 (Stone)  
Version: April 15, 2021  
Hearing Date: July 6, 2021  
Fiscal: Yes  
Urgency: No  
JT

**SUBJECT**

Resource families: hearings

**DIGEST**

This bill clarifies processes related to criminal background checks in the context of approval for placements of children in the child welfare system.

**EXECUTIVE SUMMARY**

California's Continuum of Care Reform (CCR) effort is a system-wide effort to institute a series of reforms to California's child welfare system. Research shows that children who live apart from their biological parents do best when they are cared for in committed nurturing family homes, instead of group or congregate care settings. CCR was designed to reduce the number of foster children placed in congregate care settings by improving the assessments of children and families and establishing a child and family team for each child in foster care. Assembly Bill 403 (Stone, Ch. 773, Stats. 2015) was the first of six CCR bills sponsored by California Department of Social Services. Collectively, these bills have created the statutory and policy framework to ensure services and supports provided to the child or youth and their family are tailored toward the ultimate goal of maintaining a stable permanent family.

This is the seventh DSS-sponsored CCR bill. It would adopt changes to further facilitate implementation of CCR. The bill (1) clarifies provisions governing the appeal of criminal records exemptions denials or recessions, and (2) aligns provisions related to criminal background checks in tribal placements with existing laws applicable to resource family approvals. There is no opposition. The bill passed the Senate Human Services Committee by a vote of 5-0.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes ICWA (25 U.S.C. § 1901) to protect the best interest of Indian children by promoting the stability and security of Indian tribes and families by establishing minimum standards for:
  - a) removal of Indian children from their families;
  - b) placement of such children in foster or adoptive homes that reflect the unique values of Indian culture; and
  - c) assistance to Indian tribes in the operation of child and family service programs. (*Id.* at § 1902.)
- 2) 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. (Welf. & Inst. Code § 300.)<sup>1</sup>
- 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. (§ 16519.5(d).) Prohibits the Department of Social Services (DSS) from issuing a criminal record clearance to a person arrested for certain violent felonies against the individual unless the DSS investigates the incident and secures admissible evidence as to whether the person poses a risk to the health and safety of the child. (Health & Saf. Code § 1522(e)(2).) 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. (*Id.* at (g).)
- 4) Requires the Department of Justice (DOJ) to maintain a state summary of criminal history information to be furnished to specified parties in the course of their duties, including county child welfare agency and tribal personnel in connection with approval of licensing of foster care or adoptive homes. (Pen. Code § 111505(a), (b)(18)-(20).) When a summary of criminal history is required for specified employment, licensing, or certification purposes, including foster care or adoption, requires specified information related to certain convictions and arrests to be provided. (*Id.* at (m).)
- 5) Enables a tribal agency to request from the DOJ state and federal level summary criminal history information for the purpose of approving a trial home for the placement of an Indian child into foster or adoptive care. (Pen. Code § 11105.08(a).) The DOJ must provide a state and federal level response pursuant to section 111505(m), as described above. (*Id.* at (d); Welf. & Inst. Code § 10553.12.)

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

- 6) Requires the DSS, county adoption agency, or licensed adoption agency to require each person who files an application for adoption to be fingerprinted and secure from an appropriate law enforcement agency any criminal record of the person to determine whether they have ever been convicted of a crime other than a minor traffic violation, as specified. (Fam. Code § 8712(a).) The record must be taken into consideration when evaluating the prospective adoptive parent, and an assessment of the effects of any criminal history on the ability of the prospective adoptive parent to provide adequate and proper care and guidance to the child must be included in a report to the court. (*Id.* at (b).) Final approval for an adoptive placement in any home with an adult who has been convicted of an offense for which an exemption cannot be granted pursuant to a criminal records check process under Health and Safety Code section 1522(g)(2)(A).
- 7) Establishes procedures governing the resource family approval process for any individual or family that has successfully met both the home environment assessment standards and the permanency assessment criteria, as specified, necessary for providing care for a child placed by a public or private child placement agency by court order, or voluntarily placed by a parent or legal guardian. (Welf. & Inst. Code § 16519.5(a), (c), (d).)
- 8) Establishes procedures governing an appeal of a denial or rescission of approval for a criminal record exemption. (Welf. & Inst. Code § 16519.5(d).) If the party does not file a timely appeal, provides that the action is final and subject to dismissal, unless there is good cause, defined to mean a substantial and compelling reason beyond the party's control, considering the length of delay, the diligence of the party filing the appeal, and the potential prejudice to the other party. (*Id.* at (e).)
- 9) Provides that upon a finding of noncompliance, the DSS may require a foster family agency to deny a resource family application, rescind the approval of a resource family, or take other action deemed necessary for the protection of a child who is or who may be placed with the resource family, according to prescribed procedures. (*Id.* at (i).)

This bill:

- 1) Requires that a DOJ provided summary of criminal history information be provided pursuant to the process described under Family Code section 8712, instead of Penal Code section 11105(m), aligning this provision with the requirements applicable to the resource family approval process.
- 2) Clarifies the provisions governing when a county's action to deny or rescind a criminal records becomes final with respect to the appeal, not the underlying action. Expands these provisions to include when the subject of the action withdraws the appeal or fails to appear at the hearing without good cause. Specifies that this does

not apply to administrative proceedings against a resource family, applicant, or individual that violates other specified provisions.

- 3) Requires the department to define in written directives or regulations when there is “good cause” for failure to appear at a hearing on a criminal background exemption.
- 4) Provides that a temporary exclusion of an individual following a county’s denial of an application for resource family approval, rescission of approval, or denial or rescission of a criminal record exemption, may only be imposed as set forth in the written directives or regulations adopted by the department, as specified.
- 5) Replaces the provisions governing the DSS’s authority to require a foster family agency to deny a resource family application based on a finding of noncompliance with a provision that instead allows a county and the DSS to coordinate the filing of actions, file consolidated pleadings, or file a motion to consolidate multiple actions if a matter involves both a county and department action.
- 6) Makes other conforming and technical changes.

### COMMENTS

#### 1. Author’s statement

The author writes:

AB 1283 is this year’s legislation to update the Continuum of Care Reform process that began with the passage and signing of AB 403 in 2015. As written, this measure would clarify the effect of a no-show at a resource family approval appeal hearing, conform language around temporary exclusion statutes, remove unnecessary references from the welfare and institutions code, and streamline background checks for Tribally Approved Homes.

This bill seeks to improve the implementation of CCR by making simple, technical changes to the code that clarify language and RFA procedures for child welfare practitioners. In doing so, the bill helps ensure that California is properly supporting resource families and providing foster youth with the greatest chance to grow up in permanent and supportive homes.

2. Clarifies provisions governing the appeal of criminal records exemptions denials or recessions

If a child brought into the custody of the county is not returned to the parent or guardian, the social worker must initiate an assessment to determine the appropriate placement. 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. (§§ 309(d)(2), 361.4(b).) If the check indicates that an 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 & Saf. Code § 1522(g)(2)(A).) If, instead, it is a crime for which the social services agency may grant an exemption, the child may be placed in the home only if certain criteria are met. (*Id.* at (g)(2); §§ 309(d), 361.4(b).) The county welfare agency must then evaluate or deny the home approval pursuant to section 16159.5, which establishes a process for approving foster families, subject to the same criminal background check. (§ 16519.5(d)(2)(A)(i)(I).)

Existing law establishes procedures governing an appeal of a denial or rescission of approval for a criminal record exemption. (Welf. & Inst. Code § 16519.5(d).) If the party does not file a timely appeal, the action is final and subject to dismissal, unless there is good cause, defined to mean a substantial and compelling reason beyond the party's control, considering the length of delay, the diligence of the party filing the appeal, and the potential prejudice to the other party. (*Id.* at (e).) Upon a finding of noncompliance, the DSS may require a foster family agency to deny a resource family application, rescind the approval of a resource family, or take other action deemed necessary for the protection of a child who is or who may be placed with the resource family, according to prescribed procedures. (*Id.* at (i).)

This bill clarifies that the provisions governing when a county's action to deny or rescind a criminal records exemption becomes final with respect to the appeal, not the underlying action. The bill expands these provisions to include when the subject of the action withdraws the appeal or fails to appear at the hearing without good cause. The bill also requires the DSS to define in written directives or regulations when there is "good cause" for failure to appear at a hearing on a criminal background exemption.

The bill also provides that a temporary exclusion of an individual following a county's denial of an application for resource family approval, rescission of approval, or denial or rescission of a criminal record exemption, may only be imposed as set forth in the written directives or regulations adopted by the department, as specified.

Finally, the bill replaces the provisions governing the DSS's authority to require a foster family agency to deny a resource family application based on a finding of noncompliance with a provision that instead allows a county and the DSS to coordinate

the filing of actions, file consolidated pleadings, or file a motion to consolidate multiple actions if a matter involves both a county and department action.

3. Aligns provisions related to criminal background checks in tribal placements with existing laws applicable to resource family approvals

“The Indian Child Welfare Act of 1978 (ICWA), which establishes federal standards for state-court child custody proceedings involving Indian children, was enacted to address ‘the consequences . . . of abusive child welfare practices that [separated] Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes,’ [citation].” (*Adoptive Couple v. Baby Girl* (2013) 570 U.S. 637, 637.) Among other things, ICWA sets forth minimum federal standards by: (1) establishing jurisdictional requirements; (2) allowing for notice of and intervention in Indian child custody proceedings by a tribe; and (3) providing that the acts, records, and judicial proceedings of tribal courts are entitled to full faith and credit to the same extent that the acts, records, or judicial proceedings of another state would be.

Existing law requires the DOJ to maintain a state summary of criminal history information to be furnished to specified parties in the course of their duties, including county child welfare agency and tribal personnel in connection with approval of licensing of foster care or adoptive homes. (Pen. Code § 111505(a), (b)(18)-(20).) When a summary of criminal history is required for specified employment, licensing, or certification purposes, including foster care or adoption, requires specified information related to certain convictions and arrests to be provided. (*Id.* at (m).) A tribal agency may request from the DOJ state and federal level summary criminal history information for the purpose of approving a trial home for the placement of an Indian child into foster or adoptive care. (Pen. Code § 11105.08(a).) The DOJ must provide a state and federal level response pursuant to section 111505(m), as described above. (*Id.* at (d); Welf. & Inst. Code § 10553.12.)

While this criminal background check process used to apply to the resource family approval process, in recent years that has been replaced under CCR by a streamlined process contained in Family Code section 8712. As a result, a tribal agency that wishes to adopt or enter a guardianship for a foster child in their care is required to undergo subsequent fingerprinting and an additional more thorough background check. This bill proposes to clarify that TAHs are required to undergo background checks as described in Family Code Section 8712, providing tribal agency approval process has the same streamlined background check and adoption process as resource families.

3. Support

The DSS, the bill's sponsor, writes:

As with any large reform effort, policy clarifications and technical amendments are necessary to ensure proper implementation. AB 1283 will clarify and address those changes for the continued implementation of CCR and the resource family approval process.

**SUPPORT**

California Department of Social Services

**OPPOSITION**

None known

**RELATED LEGISLATION**

Pending Legislation: SB 354 (Skinner, 2021) facilitates placement of foster youths with relatives and nonrelative extended family members who have criminal records but do not present a danger to the child.

Prior Legislation:

AB 2944 (Stone, Ch. 104, Stats. 2020) furthered CCR efforts made by AB 403, AB 1997, AB 404, AB 1930, and AB 819.

AB 819 (Stone, Ch. 777, Stats. 2019) furthered CCR efforts made by AB 403, AB 1930, AB 1997, AB 404, and AB 1930.

AB 1930 (Stone, Ch. 910, Stats. 2018) furthered CCR efforts made by AB 403, AB 1997, and AB 404.

AB 404 (Stone, Ch. 732, Stats. 2017) furthered CCR efforts made by AB 403 and AB 1997.

AB 1997 (Stone, Ch. 612, Stats. 2016) furthered CCR efforts made by AB 403.

AB 403 (Stone, Ch. 773, Stats. 2015) implemented CCR recommendations to better serve children and youth in California's child welfare services system.

SB 678 (Ducheny, Ch. 838, Stats. 2006) established Cal-ICWA, revising and recasting portions of state code that address Indian child custody proceedings and codifying into

state law various provisions of ICWA, the Bureau of Indian Affairs Guidelines for State courts, and state Rules of Court.

**PRIOR VOTES:**

Senate Human Services Committee (Ayes 5, Noes 0)

Assembly Floor (Ayes 75, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Human Services Committee (Ayes 8, Noes 0)

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