

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

SB 354 (Skinner)
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JT

SUBJECT

Foster youth: relative placement

DIGEST

This bill 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.

EXECUTIVE SUMMARY

A person with a criminal record who wishes to become a foster parent may be able to obtain clearance if they can show they are of present good character, unless the offense was one of numerous types of felonies, in which case they are automatically disqualified, without regard to the underlying circumstances, how long ago it occurred, what has happened since, or their relationship to the child. This often deprives the child of their desired placement and works to their detriment, compounding and magnifying the inequitable racial impacts of the criminal justice system and the child welfare system.

This bill makes several changes that are broadly aimed at facilitating the placement of foster youths with relatives and nonrelative extended family members who have criminal records but do not present a danger to the child. The bill, particularly as it relates to relatives and nonrelative extended family members, 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.

The bill is co-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. The bill passed the Senate Human Services Committee by a vote of 4-0. Amendments are proposed on page 14.

PROPOSED CHANGES TO THE LAW

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. (Welf. & Inst. Code § 300.)¹
- 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. (§ 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).)
- 3) Non-exemptible crimes are essentially any violent felony, including:
 - a) 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. (Health & Saf. Code § 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)):
 - i. 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. (*Id.* at (g)(2)(A)(iii)(I).)

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

- ii. Within the last five years, physical assault, battery, or a drug- or alcohol-related offense. (*Id.* at (g)(2)(A)(iii)(II).)
 - 4) 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. (*Id.* at (g)(2)(B).) When granting an exemption for such a crime, the DSS or 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.
 - 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. (*Id.* at (g)(2)(C).)
 - b) If the crime does not fall under 3) 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. (*Id.* at (g)(2)(D).)
- 5) Provides for temporary placement of a child on an emergency basis with a relative or nonrelative extended family member (§§ 309(d)(1), 319(h)), 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 (§§ 309(d)(2), 319(h)(3), 361.2(e), 361.4(b)). Requires preferential consideration to be given to a placement request by a relative of the child. (§ 361.3.) Prohibits temporary placement if a violent felony specified in 3), above, is found. (§ 361.4(b)(5).)

This bill:

- 1) Expands the scope of criminal records that are eligible for an exemption under Health and Safety Code section 1522. Specifically:
 - a) Makes all non-exemptible crimes exemptible, subject to the process described in 4(a), above, if the applicant is seeking placement of a child or children with whom the applicant has a family-like relationship, the applicant is of present good character, and placement with the relative or nonrelative extended family member would not pose a health and safety risk to a child.
 - b) Adds to the factors considered in the process described in 4(a) the following:
 - i. Other evidence of the applicant's or person's willingness and ability to provide a loving, safe, and stable home for children.
 - ii. If the person is seeking approval as a resource family to provide care to a specific relative child or children, the DSS or other approving entity must also consider the wishes of the child or children and the strength of the existing bond between the person and the child or children.
 - c) Enlarges the scope of the process for granting an exemption under 4(b) by reducing the scope of crimes that would fall under 4(a). Specifically:
 - i. Changes the application of the process in 4(a) to apply to misdemeanor and felony convictions to those that occurred within the last three and five years, respectively, instead of five and seven years, as provided in current law.
 - ii. Provides that the process in 4(b) applies to an offense that would otherwise be subject to the process in 4(a) if the offense was subsequently dismissed or if the convicted person obtained a certification of rehabilitation or a pardon.
- 2) Makes it more difficult for resource family approval to be denied on the basis of criminal records. Specifically:
 - a) Provides that if a criminal records check indicates that a person has been convicted of a violent felony that is automatically disqualifying under existing law, the home approval must be denied unless the person has a family-like relationship with a child and is granted an exemption under the bill's provisions.
 - b) Provides that any criminal history of an applicant or other adults living in the home cannot be used as the sole basis to deny the approval if the applicant is a relative or nonrelative extended family member, 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.

- c) If the applicant or another adult in the home has been arrested for specified offenses or has a criminal conviction that is automatically disqualifying under existing law, provides that the applicant or other adult in the home bears the burden of showing the placement will not pose a risk to the health and safety of the child.
- 3) Authorizes a court to order placement of a child in the home of a relative or a nonrelative extended family member, regardless of the status of the criminal records clearance or resource family approval, so long as the court finds that the placement does not pose a risk to the health and safety of the child. This applies to temporary placement of a child on an emergency basis, as well as placement of the child on a longer-term basis following the dispositional hearing to decide where the child will live.
- 4) Ensures more support is provided to relatives and nonrelative extended family members. Specifically:
 - a) Requires the child welfare agency to use reasonable efforts to assist relatives or nonrelative extended family member in obtaining necessary items for the care of a child if the lack of resources, such as cribs and car seats, is the sole issue preventing emergency placement of the child with the relative or nonrelative extended family member.
 - b) 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.
 - c) Provides that a requirement that a household have the financial ability to ensure the stability and financial security of the family may be waived for relatives or nonrelative extended family members on a case-by-case basis.
- 5) Requires the DSS to submit a report to the Legislature by January 1, 2023 regarding the resource family approval process and criminal records clearance, as provided.

COMMENTS

1. Author's statement

The author writes:

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. It also repeals a provision that allows a parent to be denied custody of a child based solely on the parent's prior conviction.

2. The juvenile welfare system

a. *Judicial process*

The child welfare system is intended to achieve a delicate balance of values, including “protecting children from harm, preserving family ties, and avoiding unnecessary intrusion into family life.” (*In re R.T.* (2017) 3 Cal.5th 622, 638) The overarching goal of dependency proceedings is to safeguard the welfare of California's children. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 673.) There are approximately 60,000 children in California's foster care system.

Juvenile court proceedings commence when a social worker files a petition under sections 311 and 332. The purpose of the petition is to protect the child from some parental deficiency, not to punish the parent. (*See In re Alysha S.* (1996) 51 Cal.App.4th 393, 397; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) If the child needs immediate care or is in immediate danger, the child may be removed from a parent's physical custody and may be placed in the temporary custody of the social worker, a responsible relative, or guardian. (§§ 305, 306.) If the social worker determines that the child should be detained in custody, the social worker is required to file a petition with the juvenile court. (§ 290.1.) Within two court days, the court must hold a detention hearing to determine whether the child should be further detained. (§ 315.) The petition must establish a prima facie case that the child is a victim of abuse or neglect under specified conditions described in section 300, that continuance in the parent's or guardian's home is contrary to the child's welfare, and that further harm will come to the child or the child does not want to return to the home due to abuse. (§ 319(c).)

If the court orders a child detained, the court must state the facts on which the decision is based, specify why the initial removal was necessary, reference specified evidence, and order that temporary placement and care of the child be vested with the county welfare department pending the subsequent hearing known as the “jurisdictional” hearing under section 355, which must be held within 15 court days. (§§ 319(g); 334.) If appropriate, the court must order services to be provided as soon as possible to reunify the child and their family. (§ 319(g).)

Within 15 court days of a detention hearing or 30 calendar days of an initial petition hearing, the dependency court holds a “jurisdictional” hearing on the petition to determine whether the child is a victim of abuse or neglect under section 300. (§ 355.) Under section 300, the court has jurisdiction to adjudge the child a dependent if a preponderance of the evidence shows that the child has suffered or is at a substantial risk of suffering serious harm.

After sustaining the petition’s allegations and establishing jurisdiction over the child, the court holds a “dispositional” hearing to decide where the child will live. (§ 361(a).) A dependent child may not be taken from the physical custody of a parent, guardian, or custodian unless the juvenile court finds clear and convincing evidence that at least one of several specified conditions showing that the child is endangered applies. (*Id.* at (c).)

If the court decides the child should not be with the parents, a review hearing is held at least every six months. (§ 366.21(e) [six-month review]; § 366.21(f) [12-month review]; § 366.22(a) [18-month review].) At a review hearing, the court must return the child to their parents unless the court finds by a preponderance of evidence that the child would be in substantial risk of danger. (§ 366.21(e)(1).) Reunification services generally must be provided. (§364(a); 366(a)(1).)

If the court decides to terminate reunification services without returning the child to parental custody, the focus shifts from preserving the family to choosing a permanent placement for the child. A hearing is held under section 366.26 to terminate parental rights and select a permanent plan for the child – usually adoption, guardianship, or another specified permanent living arrangement. (§ 366.26(b).)

b. Placement with relatives and nonrelative extended family members

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 of the suitability of any able and willing relative or nonrelative extended family member who is available and requests temporary placement of the child. (§ 309(d)(1).) Preferential consideration must first be given to the home of any relative seeking placement of the child. (§ 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. (§ 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. (§§ 309(d)(2), 361.4(b).) If the check indicates that the relative, nonrelative extended family member, 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 & 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, including relatives and nonrelative extended family members, subject to the same criminal background check. (§ 16519.5(d)(2)(A)(i)(I).)

3. Automatic disqualification for a criminal record is unconstitutional if the applicant has a parental relationship with the child

The Fourth District Court of Appeal recently held that if an applicant for resource family approval 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, 28-31.) 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 a close relationship and wanted to reside, attempted to apply to have him placed in their care. (*Id.* at 21-22.) 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. (*Id.* at 22.)

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 "[a]ny person who willfully inflicts upon a child any cruel or inhuman corporal punishment or an injury resulting in a traumatic condition ..." (*Id.* at 22-23.) 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. (*Id.* at 22.) The resources family application was denied because section 273d fell into the category of non-exemptible crimes. (*Id.* at 23.)

The court concluded that this absolute bar on placement was unconstitutional as applied to the grandparents, insofar as 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. (*Id.* at 27.) 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 to grandparents, it does apply to anyone with whom the child has developed a parental relationship, grandparents included. (*In re H.K.* (2013) 217 Cal.App.4th 1422, 1435.)

In re C.P. discussed three cases from New York that held that an absolute statutory bar to placement of a child with a caretaker with a criminal conviction was unconstitutional where the child had long been living with caretakers as parent and child. (*Matter of Abel* (N.Y. Fam. Ct. 2011) 33 Misc.3d 710 [20-year old third-degree robbery conviction]; *In re Adoption of Jonee* (N.Y. Fam. Ct. 1999) 181 Misc.2d 822 [20-year old manslaughter conviction for killing an abusive paramour]; *In re Adoption of Corey* (N.Y. Fam. Ct. 1999) 184 Misc.2d 437 [14-year old armed robbery conviction].) These cases recognized not just the rights of the caretakers, but also the right of the child to maintain familial relationships. (*Matter of Abel, supra*, 33 Misc.3d at 717-718; *In re Adoption of Corey, supra*, 184 Misc.2d at 446; *In re Adoption of Jonee, supra*, 181 Misc.2d 822, 826.)² *In re C.P.* also discussed California cases recognizing a child's constitutionally protected interest in remaining with the adoptive parents, with whom they had formed a bonded family. (*In re Bridget R.* (1996) 41 Cal.App.4th 1483, 1507; *In re H.K., supra*, 217 Cal.App.4th at 1435 [upholding denial of placement with an adult half-sibling who had an Oregon conviction for first degree manslaughter and finding the prohibition of the placement was not constitutionally infirm since the child had only occasional contact with the adult half-sibling].)

The California Court of Appeal found these cases persuasive. 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

² The right to a case-specific determination was established in *Stanley v Illinois* (1972) 405 US 645, which struck down as violative of the Fourteenth Amendment Illinois' irrebuttable statutory presumption that all unmarried fathers are unqualified to raise their children. The Court held that a hearing was required by the due process clause, upon the death of the mother and prior to the removal of the children, to determine whether the father was fit to raise the children. In so ruling, the Court opined that "procedure by [irrebuttable] presumption is always cheaper and easier than individualized determination. But when ... the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child ... [and] therefore cannot stand." (*Id.* at 656-57.)

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.

(*In re C.P.*, *supra*, 47 Cal.App.5th at 29.)

4. Facilitates placement with relatives and nonrelative extended family members who have criminal records but do not endanger to the child

a. *Expands the scope of criminal records that are eligible for an exemption*

Consistent with *In re C.P.*, this bill, for applicants seeking placement of a child with whom they have a family-like relationship, makes all crimes exemptible.³ The applicant must be a relative or nonrelative extended family member who is of present good character and placement with the applicant must not pose a health and safety risk. If those factors are satisfied, the applicant may go through the process that is applicable to currently exemptible crimes.

That process authorizes the DSS or the approving entity to grant an exemption if there is substantial and convincing evidence to support a reasonable belief that the applicant is of present good character. (Health & Saf. Code § 1522(g)(2)(B).) The DSS or approving entity must consider all reasonably available information, including: the nature of the crime or crimes; the period of time since the crime was committed; the number of offenses; circumstances surrounding the commission of the crime indicating the likelihood of future criminal activity; activities since conviction, including employment, participation in therapy, 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; 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. (*Id.* at (g)(2)(C).)

The bill adds to the factors considered in the process: (1) other evidence of the applicant's or person's willingness and ability to provide a loving, safe, and stable home for children, and (2) the wishes of the child and the strength of the existing bond between the person and the child, as applicable. These additional factors are applicable to any exemptible crime.

³ Federal law conditions Title IV funding on states making certain crimes non-exemptible. (42 U.S.C. § 671(a)(20).) However, granting an exemption would not appear to jeopardize the state's funding in general; rather, it would make that particular placement ineligible for federal funding. (*See In re Miguel E.* (2004) 120 Cal.App.4th 521, 545-546.)

Additionally, existing law establishes a simplified process for low-level crimes. If the crime is not a non-exemptible crime or a crime subject to the process described above, then the 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. (*Id.* at (g)(2)(D).) The bill enlarges the scope of offenses that are eligible for the simplified 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.

b. Makes it harder to deny home approval for those with criminal records

Existing law provides that if a person has a conviction for a non-exemptible violent felony under Health and Safety Code section 1522(g)(2)(A), home approval must be denied. (§ 16519.5(d)(2)(A)(III).) If, however, the crime is exemptible, home approval may be granted only if the exemption is granted. (*Id.*)

The bill provides that if a criminal records check indicates that a person has been convicted of a violent felony under Health and Safety Code section 1522(g)(2)(A), the home approval must be denied unless the person has a family-like relationship with a child and is granted an exemption under the bill's provisions. An approval based on such an exemption must be limited to that particular child. The bill also provides that the criminal history of an applicant or other adults living in the home cannot be used as the sole basis to deny the approval if the applicant is a relative or nonrelative extended family member, 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. Read together, these provisions appear to make it so that even if an exemption is not granted, the home must nevertheless be approved unless other admissible evidence independent of the non-exempted offense is introduced.

Additionally, if the applicant or another adult in the home has been arrested for specified offenses or has been convicted of a violent felony under Health and Safety Code section 1522(g)(2)(A), the bill provides that the applicant or other adult in the home bears the burden of showing the placement will not pose a risk to the health and safety of the child. This provision applies regardless of the person's relationship to the child. Collectively, these changes appear to make it so that no criminal conviction is an absolute bar to obtaining criminal clearance.

- c. *Authorizes a court to order placement with a relative or nonrelative extended family member 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, citing *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1033; see *In re Isabella G.* (2016) 246 Cal.App.4th 708, 719.) “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.’ [Citation.]” (*In re R.T.*, *supra*, 232 Cal.App.4th at 1307-1308.)

“The decision to grant a criminal records exemption is an executive function that lies exclusively with the Agency. [Citation.]” (*In re M.L.* (2012) 205 Cal.App.4th 210, 225 [juvenile court exceeded its powers when it ordered placement of a child with a relative with disqualifying history for whom agency did not grant an exemption].) “Having given the authority to grant an exemption to the Agency, ‘it is apparent that the Legislature did not intend to confer such authority on the juvenile court.’ [Citation.] Accordingly, the juvenile court may not place a child with a relative who has an unexempted criminal history, even when the court determines that placement would be in the child’s best interests...” (*Id.* at 226.) However, “the juvenile court may review the agency’s denial of a criminal records exemption for abuse of discretion. [Citation.]” (*Id.* at 227.) But even “[i]f the court determines that the Agency did abuse its discretion, it may direct it to reconsider the request using the appropriate legal standard, but cannot directly override the request and grant the exemption.” (*Id.*)

The bill expands the powers of a court by authorizing it to order placement of a child in the home of a relative or a nonrelative extended family member, regardless of the status of the criminal records clearance or resource family approval, so long as the court finds that the placement does not pose a risk to the health and safety of the child. This applies to temporary placement of a child on an emergency basis, as well as placement of the child on a longer-term basis following the dispositional hearing to decide where the child will live. With respect to temporary placement, the bill specifically authorizes the court to use its independent judgment after reviewing the placement recommendation of the county welfare department.

- d. *Requires resource family approval for temporary placements with relatives or nonrelative extended family members unless the placement endangers the child*

Existing law also provides that a county may place a child with a resource family applicant who has successfully completed a home environment assessment before completion of a permanency assessment only if a compelling reason for placement exists based on the needs of the child. (§ 16519.5(e)(1).) Existing law provides that

placement under this provision, or under provisions allowing emergency temporary placement, does not entitle an applicant to resource family approval. (*Id.* at (c)(3); *In re M.L.* (2012) 205 Cal.App.4th 210, 224 [finding that an emergency placement was not “transformed into a de facto formal placement due to the ‘mere passage of time’ (citation)”].)

The bill would instead provide that if a relative or nonrelative extended family member has a family-like relationship with a child or a child is already placed in the home of the relative or nonrelative extended family member pursuant to specified provisions that would be changed under the bill, resource family approval cannot be denied unless the county has evidence that is admissible in an administrative hearing to establish that the placement poses a risk to the health and safety of the child. Taken together with the expanded authority of the court to order placement regardless of criminal clearance or resource family approval status, described above, these provisions make it much more likely that a child is placed with relative or nonrelative extended family members.

- e. Amendment to exclude felony convictions within the last five years for violence or abuse that directly reflect on a person’s fitness to care for the child*

While the holding of *In re C.P.* broadly applies to any person with a parental relationship with the child, regardless of the crime, that case and those it discusses involve fairly sympathetic situations in which a person had committed a crime, such as armed robbery, decades earlier and had since rehabilitated and developed close parental relationships with the child. None of these cases involved recent crimes or, say, sexual abuse of a child. Indeed, the Court of Appeal stopped short of suggesting that California’s scheme for automatic disqualification necessitates reform. Instead, the court stated “[w]e emphasize that the Legislature’s determination that an offense constitutes an absolute bar to placement must still be considered as the starting point in the analysis when it applies, even though due process requires that a person who has a parental relationship with a child receive a more individualized determination when placed in a broad category for disqualification.” (*Id.* at 30.) The court pointed out that “for crimes normally subject to an absolute statutory bar on exemptions” consideration of the “nature of the crime and whether it involved violence or a threat of violence to others...will often weigh strongly, even dispositively, in favor of denial.” (*Id.*)⁴

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

⁴ The court noted other contexts in which the juvenile court makes a determination of a parental relationship: in a permanency plan hearing, at which point there is a strong preference for adoption, a parent that wishes to avoid termination of parental rights must show that a statutory exception to termination applies. (§ 366.26(c).) One such exception is the “parental benefit exception,” which applies when there is a compelling reason that the termination of parental rights would be detrimental to the child. (*Id.* at (c)(1)(B).)

low. A serial child molester going through this application process is an exercise in futility. Thus, it is arguably consistent with *In re C.P.* for the state to continue to delineate a narrow set of egregious, recently-committed violent felonies against a person that will weigh dispositively in favor of denial.

The author has agreed to the following amendments:

Amendment

Amend the bill to preclude placement of a child in a home if the applicant or other adult in the home has been convicted of felony child abuse or neglect, spousal abuse, crimes against a child, including child pornography, rape, sexual assault, or homicide within the last five years. This change would be made to provisions governing the criminal clearance check, home approval, and judicial discretion.

5. Resources for relatives and nonrelative family members

The bill allows the county child welfare departments to waive the requirement that a resource family applicant demonstrate the financial ability to ensure the stability and financial security of the family for relative and nonrelative extended family members on a case-by-case basis. The bill requires county child welfare departments to use reasonable efforts to assist the relative or nonrelative extended family member 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. This bill also expands eligibility for emergency caregiver financial support eligibility under the Approved Relative Caregiver Funding Program to include relatives and nonrelative extended family members. This ensures these placements will be funded, as other resource family placements are.

6. Requires a report on the resource family approval process

The bill additionally requires the DSS 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 and (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 nonexemptible crime. The bill would further require the DSS to stratify the data by a variety of demographic data, including, at a minimum, by race and income level. Having access to this information would allow the Legislature to better assess the challenges with resource family approval for relatives and nonrelative extended family members with a criminal history and help inform future policy decisions.

7. Support

A coalition of organizations jointly 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.

East Bay Family Defenders echoes these points and adds that "current law focuses on systemic involvement from the past in its requirement that family members or relatives obtain criminal history exemptions before accepting a child into their home. As a result, both children and loving relatives offering to care for them must frequently endure extended uncertainty and anxiety while they go through the prolonged administrative and appeal processes to seek an exemption. SB 354 shifts the focus of the exemption process from a mechanical review of the relatives past history to a current assessment of whether they would pose a substantial risk of abuse or neglect to a child in their care." They also point out that "African-American and Latinx families are disproportionately affected by contact with both the child welfare and the criminal justice systems due to systemic patterns of institutionalized racism. System involvement is also closely associated with poverty: the proportion of children in foster care from impoverished homes is 10 times higher than the general population."

SUPPORT

Alliance for Children's Rights (co-sponsor)

A New Way of Life Re-entry Project (co-sponsor)

Children's Law Center (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)

All of Us or None

Alliance for Boys and Men of Color
Alliance of Relative Caregivers
American Civil Liberties Union
Anti-recidivism Coalition
Aouon Orange County
Asian Americans Advancing Justice - California
California Coalition for Women Prisoners
California Families Against Solitary Confinement
California for Safety and Justice
California United for A Responsible Budget
Californians for Safety and Justice
Center for Employment Opportunities
Children's Defense Fund - California
Communities United for Restorative Youth Justice
Community Legal Services in East Palo Alto
Courage California
CURE California
Dependency Legal Services
East Bay Community Law Center
East Bay Family Defenders
Ella Baker Center for Human Rights
Family Reunification Equity & Empowerment
Fathers & Families of San Joaquin
Fresno Barrios Unidos
Harriett Buhai Center for Family Law
Hillsides
If/when/how: Lawyering for Reproductive Justice
Initiate Justice
Inland Empire Fair Chance Coalition
John Burton Advocates for Youth
Legal Aid at Work
Los Angeles Dependency Lawyers, Inc.
Public Counsel
Re:Store Justice
Religious Coalition for Reproductive Choice California
Root & Rebound
Rubicon Programs
San Francisco District Attorney's Office
San Francisco Public Defender
SEIU California
Sigma Beta Xi, Inc. (sbx Youth and Family Services)
Silicon Valley De-bug
St. Joseph's Family Center
SURJ (Showing up for Racial Justice) Contra Costa County

The Mentoring Center
The Place4grace
Time for Change Foundation
UC Berkeley's Underground Scholars Initiative
Universalist Unitarian Church of Riverside
Vista Del Mar Child and Family Services
Women's Foundation California
Young Women's Freedom Center

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 677 (Holden, 2021) 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. The bill is pending in the Assembly Human Services Committee.

Prior Legislation:

SB 213 (Mitchell, Ch. 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 of good character at present.

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

PRIOR VOTES:

Senate Human Services Committee (Ayes 4, Noes 0)
