

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 824 (Ashby)
Version: April 11, 2023
Hearing Date: April 25, 2023
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Foster care

DIGEST

This bill expands the Department of Social Services' (DSS) authority to grant an exemption to restrictions on a person serving as a resource family for a specific child when that person has a criminal conviction, to permit DSS to grant an exception to a person who is an extended family member or a nonrelative extended family member, provided that DSS finds the exemption is justified and other specified conditions are met.

EXECUTIVE SUMMARY

Research shows that a child taken from the custody of their parent, guardian, or Indian custodian will suffer fewer negative outcomes if they are placed with a trusted relative or other person with whom they have a family-like relationship rather than a stranger. Until last year, however, if a relative of a child had been convicted of certain crimes, they would be unable to be approved to take custody of the child, regardless of how long ago the crime was committed, their relationship to the child, or whether the court found the relative to be of present good character. The Legislature eliminated this absolute prohibition for relatives of a child in 2021 by passing SB 354 (Skinner, Ch. 687, Stats. 2021), which shifted the process for obtaining placement with a relative from a mechanistic system that categorically excluded broad swathes of people with criminal records to an individualized process that allows for a case-by-case determination of the relative'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.

This bill expands SB 354's structure of making kinship care decisions based on individualized determinations by extending the case-by-case determination procedure to two additional groups of persons: for Indian children, their extended family

members – a relationship which, under the Indian Child Welfare Act, is defined by the child’s tribe; and for non-Indian children, nonrelative extended family members, who are not related to the child by blood but have a familial or mentoring relationship with the child. With this bill, extended family members and nonextended family members with criminal convictions will be eligible for the same exemption from DSS as relatives, thereby expanding the number of trusted persons who may take custody of a child if they have to be taken from their parent, guardian, or Indian custodian.

This bill is sponsored by A New Way of Life Reentry Project, the Alliance for Children’s Rights, the California Tribal Families Coalition, the Children’s Law Center of California, Legal Services for Prisoners with Children, Starting Over, Inc., and the Underground Scholars Initiative – Riverside, and is supported by the Alliance for Children’s Rights, the California Alliance of Caregivers, the Family Law Section of the California Lawyers Association, Communities Reunited for Restorative Youth Justice, the County of Sacramento, the County Welfare Directors Association, East Bay Family Defenders, Los Angeles Dependency Lawyers, Inc., Public Counsel, and Smart Justice California. There is no known opposition. This bill was passed out by the Senate Human Services Committee with a vote of 4-0.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Establishes the Indian Child Welfare Act (ICWA), which provides guidance to states regarding the jurisdictional requirements, proceedings of tribal courts, and custody proceedings involving the removal of Indian children from their parents. (25 U.S.C., ch. 21, §§ 1901 et seq.)
- 2) Provides that, within the ICWA, “extended family member” shall be defined as by the law or custom of the Indian child’s tribe or, in the absence of such law or custom, shall be a person who has reached the age of 18 and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. (25 U.S.C. § 1903(2).)

Existing state law:

- 1) Provides that a child may become a dependent of the juvenile court and be removed from their parent or guardian’s¹ custody on the basis of abuse or neglect. (Welf. & Inst. Code, § 300.)
- 2) Establishes a unified, family-friendly, and child-centered resource family approval process through which homes can be certified as foster homes, relatives and

¹ Going forward, this analysis uses “parent” to include “guardian.”

extended relatives can be approved as foster care providers, and guardians and adoptive families can be approved. (Welf. & Inst. Code, § 16519.5.)

- a) As part of the process, a county may approve as a resource family a relative of the child to care for a specific child, pursuant to the procedure in x)-y); the child and family approved under this provision are not eligible for federal funding and shall be funded pursuant to existing state mechanisms. (Welf. & Inst. Code, § 16519.5(c)(4)(B)(ii).
- 3) As part of the resource family approval process, requires DSS to conduct a criminal records search, as specified, for a person who seeks to be approved as a resource family and any adult living in the home. If the applicant or person living in the home has been convicted of a crime, the applicant must seek an exemption from disqualification in order to move forward with the approval process, unless an exemption may not be granted pursuant to 4) and the resource family applicant is not a relative as set forth in 5). (Health & Saf. Code, § 1522(a), (b).)
 - 4) Provides that DSS may or may not grant an exemption if an individual seeking to be a resource family, or an adult living in the home of the applicant, has been convicted of certain crimes within certain time frames, as follows:
 - a) Within the last 10 years, enumerated felony 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, use of weapons of mass destruction; and various listed attempted crimes or felonies punishable by death or life imprisonment. (Health & Saf. Code § 1522(g)(2)(A)(i).)
 - b) Within any time frame, enumerated felony 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. (Health & Saf. Code, § (g)(2)(A)(iii)(I).)
 - c) Within the last five years, felony physical assault, battery, or a drug- or alcohol-related offense. (Health & Saf. Code, § 1522(g)(2)(A)(iii)(II).)
 - 5) Authorizes DSS, notwithstanding 4), to grant an exemption for the applicant or other adult living in the home under the following circumstances:
 - a) The applicant is a relative of the specific child to be placed, and the applicant or other adult living in the home does not have a felony conviction within the last five years for child abuse or neglect, spousal abuse, rape, sexual assault, homicide, or any other crime against a child, including child pornography, and DSS determines that the applicant or other person living in the home is of present good character under 5)(c).

- b) DSS has substantial and convincing evidence to support a reasonable belief that the applicant or person convicted of the crime is of present good character under 5)(c) and the applicant or other person's conviction is for specified offenses, including specified misdemeanors, statutory rape, or the felonies set forth in 4).
 - c) For the determinations under 5(a) and 5(b), DSS considers all of the reasonably available information to determine whether the applicant or person is of reasonably good character, including the nature of the crime(s); the period of time since the crime was committed and any longstanding pattern of criminal conduct; activities since the conviction, including employment and participation in therapy or treatment; whether the person has successfully completed probation or parole; and any other character evidence submitted. (Health & Saf. Code, § 1522(g).)
- 6) Allows, when a child has been removed from their parent's custody on an emergency basis or following a hearing in the juvenile court, for temporary and longer-term placement of the child with a relative or nonrelative extended family member, subject to the same criminal record clearance and exemption provisions set forth in 3)-5), and with preference given to a placement request by a relative. (Welf. & Inst. Code, §§ 309, 319, 361.2, 361.3, 361.4.)
- 7) Defines the following relevant terms:
- a) "Extended family member," as used in connection with an Indian child custody proceeding under the ICWA, has the same definition as provided in the ICWA. (Welf. & Inst. Code, § 224.1(c).)
 - b) "Relative" is an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-grand," or "grand," or the spouse of any of these persons even if the marriage was terminated by death or dissolution. (Welf. & Inst. Code, § 361.3.)
 - c) "Nonrelative extended family member" is an adult caregiver who has an established familiar relationship with a relative of the child or a familial or mentoring relationship with the child. (Welf. & Inst. Code, § 362.7.)

This bill:

- 1) Expands DSS's discretion to grant an exemption for placing a child under the procedures in 5), above), with a nonrelative extended family member or extended family member of a particular child, provided that the applicant is related to the child or has a familial or mentoring relationship with the child.
 - a) The exemption granted is valid only for purposes of approving the specific child's placement with the applicant or in the tribally approved home pursuant to the ICWA.

- 2) Requires, in cases arising under the ICWA, a county worker to initiate an assessment of an extended family member's suitability for emergency placement of a child removed from the custody of their parent, if an extended family member is available and requests emergency placement. The extended family member may be granted an exemption for the placement pursuant to 1) if needed.
- 3) Authorizes a court, at a jurisdictional hearing, to place an Indian child in the home of an extended family member or a non-Indian child in the home of a nonrelative extended family member on a temporary basis, pursuant to an exemption in 1) if necessary.
- 4) Authorizes a court, at a dispositional hearing, to place an Indian child in the home of an extended family member or a non-Indian child in the home of a nonrelative extended family member, pursuant to an exemption in 1) if necessary, provided that the court finds that the placement does not pose a risk to the health and safety of the child.
- 5) Extends the existing statutes regarding the steps that a county welfare department must conduct prior to placing a child with a relative on an emergency basis, and for the emergency placement, to apply to extended family members and nonextended family members.
- 6) Extends specified benefits available to a foster children and resource families to be available to an approved relative or extended family member regardless of whether they received an exemption pursuant to 1).
- 7) Provides that there shall be no appropriation of funds for purposes of this bill pursuant to provisions providing for an appropriation to coincide with federal matching funds for certain public assistance programs.

COMMENTS

1. Author's comment

According to the author:

SB 824 seeks to remove broad and overly restrictive barriers to kinship care, which is a vital resource for children who need to be placed outside of their parents care for any number of reasons. Kinship care, when deemed healthy and safe, better maintains ties between children and their family, friends and community. Foster children who were in kinship care are more likely as adults to be employed or enrolled in higher education and less likely to need public assistance, experience homelessness, or be incarcerated, compared to children who were placed in non-kin foster care.

California’s placement and approval processes exclude too many extended family members who are fit and willing to care for children but do not meet the legal definition of being a “relative.” Further, the barriers to placement place blanket restrictions on relatives with a criminal history. While there is certainly a need to keep California’s children safe, this restriction is far too broad and sweeping. Many people who have previously dealt with our criminal justice system are perfectly capable of being responsible for the care and wellbeing of a child. The families disproportionately impacted by this broad restriction are communities of color. SB 824 seeks to keep children, whenever it is reasonably possible to do so, with their families, tribes, and communities by expanding the pool of eligible kinship caretakers for foster youth.

2. California’s foster population and the hardships experienced by foster children and youth

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.”² The overarching goal of dependency proceedings is to safeguard the welfare of California’s children.³ As of January 2023, over 52,000 children and young adults were in foster care in California; the population has generally hovered around 60,000.⁴ Black and Indigenous children are dramatically overrepresented in the foster care system, with rates of 19.7 and 16.2 children in care per 1,000 children, respectively.⁵

While the foster care system is intended to protect children, research shows “that foster care leads to poor human capital formation and a host of undesirable outcomes.”⁶ The very first step of the process – removing a child from their parent’s custody – can lead to short- and long-term harms, including PTSD and substance abuse issues.⁷ Foster

² *In re R.T.* (2017) 3 Cal.5th 622, 638.

³ *In re Josiah Z.* (2005) 36 Cal.4th 664, 673.

⁴ California Child Welfare Indicators Project, University of California at Berkeley, Report: Children in Foster Care, CWS/CMS 2022 Quarter 4 Extract (Apr. 8, 2023), available at <https://ccwip.berkeley.edu/childwelfare/reports/PIT/MTSG/r/ab636/s>. All links in this analysis are current as of April 20, 2023.

⁵ California Child Welfare Indicators Project, University of California at Berkeley, Report: Children in Foster Care by Ethnic Group, CWS/CMS 2022 Quarter 4 Extract (Apr. 8, 2023), available at <https://ccwip.berkeley.edu/childwelfare/reports/InCareRates/MTSG/r/rts/s>. Latino children are in care at a rate of 5.7 children per 1,000; white children are in care at a rate of 3.7 children per 1,000; children of Asian and Pacific Islander descent are in care at a rate of .9 children per 1,000. (*Ibid.*) There rate for multiracial children is set at 0, which may reflect a data collection issue. (*Ibid.*)

⁶ Lovett & Xue, *Family First of the Kindness of Strangers? Foster Care Placements and Adult Outcomes*, Labour Economics (Feb. 22, 2021), p. 1.

⁷ E.g., Trivedi, *The Harm of Child Removal*, 43 N.Y.U. Rev. of Law & Social Change 523, 526, 528-532. (2019).

children in California move placements, on average, 3.61 times every 1,000 days;⁸ multiple placements are associated with attachment difficulties, decreased academic performance, and externalizing and internalizing behavioral problems.⁹ And outcomes for adults who have left the foster care system are bleak: a survey conducted by the University of Chicago's Chapin Hall found that more than 25 percent of former foster youth in California reported experiencing at least one night of homelessness in the past two years, while nearly 30 percent said they had couch surfed by staying with friends because they lacked housing;¹⁰ in the mid-2000s, 70 percent of California's prison inmates had been foster children at some point in their lives.¹¹ Other studies have shown that "former foster youth have lower levels of employment and educational attainment, while having greater rates of drug use, incarceration, homelessness, unplanned [pregnancy], and welfare reciprocity."¹²

One factor that has been shown to reduce negative experiences and outcomes for foster and former foster children is the placement of children in kinship placements, rather than in traditional foster placements with strangers.¹³ "Compared to children that were placed in traditional foster care, former foster youth that were placed in kinship care are more likely to be employed or in school, less likely to be incarcerated, less likely to be homeless and less likely to receive social welfare benefits."¹⁴

3. The juvenile court process and SB 354's expansion of eligibility for kinship placements

Juvenile court proceedings commence when a social worker files a petition to have a child declared a dependent of the juvenile court.¹⁵ 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.¹⁶ 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.¹⁷ Within two court

⁸ California Child Welfare Indicators Project, University of California at Berkeley, Report: Children in Foster Care by Placement Stability, CWS/CMS 2022 Quarter 4 Extract (Apr. 1, 2023), available at <https://ccwip.berkeley.edu/childwelfare/reports/InCareRates/MTSG/r/rts/s>.

⁹ McConnell, et al., *Changes in Placement among Children in Foster Care: A Longitudinal Study of Child and Case Influences*, Soc. Serv. Rev., 80(3) (Sept. 2006), p. 399.

¹⁰ Courtney, et al., *Findings from the California Youth Transitions to Adulthood Study (CalYOUTH): Conditions of youth at age 23* (2020) Chapin Hall at the University of Chicago, pp. 18-19, available at https://www.chapinhall.org/wp-content/uploads/CY_YT_RE1020.pdf.

¹¹ Lovett & Xue, *supra*, at p. 1.

¹² *Ibid.*

¹³ *Id.* at p. 3.

¹⁴ *Ibid.*

¹⁵ Welf. & Inst. Code, §§ 311, 322. The purpose of a petition should be 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.)

¹⁶ Welf. & Inst. Code, §§ 305, 306.

¹⁷ *Id.*, § 290.1.

days, the court must hold a detention hearing to determine whether the child should be further detained.¹⁸ 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.¹⁹

At the jurisdictional hearing, the court determines whether the child is a victim of abuse or neglect and therefore a dependent of the juvenile court.²⁰ 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.²¹ 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.²² If the court decides the child should not be with the parents, a review hearing is held at least every six months.²³ 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.²⁴

If a child brought into the custody of the county is not returned 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.²⁵ Preferential consideration must first be given to the home of any relative seeking placement of the child.²⁶ 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.²⁷ The assessment process includes a records check.²⁸

Until 2022, if a relative seeking placement of the child had been convicted of certain crimes, DSS had to reject the placement, with no discretion to grant an exemption based on the particular circumstances. In 2021, however, with the support of a number of organizations dedicated to improving conditions for foster youth, the Legislature enacted SB 354 (Skinner, Ch. 687, Stats. 2021) which, among other things, gave DSS

¹⁸ *Id.*, § 315.

¹⁹ *Id.*, §§ 319(g), 334.

²⁰ *Id.*, § 355.

²¹ *Id.*, § 361(a).

²² *Id.*, § 361(c).

²³ *Id.*, §§ 366.21(e), (f), 366.22(a).

²⁴ *Id.*, § 366.26(b).

²⁵ *Id.*, § 390(d)(1).

²⁶ *Id.*, § 361.3(a).

²⁷ *Id.*, § 362.7.

²⁸ *Id.*, §§ 309(d)(2), 361.4(b).

greater discretion to allow a child to be placed with a relative who had been convicted of a crime.²⁹ This change, and others made by SB 354, were intended to provisions make it much more likely that a child is placed with a family member.

4. This bill clarifies and expands the availability of exemptions for kinship placements

SB 824 expands DSS's ability to grant an exemption to individuals seeking to take custody of a child in a dependency proceeding in two significant ways.

First, SB 824 extends DSS's discretion to grant an exemption for the placement of an Indian child with an extended family member pursuant to the ICWA. Under the ICWA, as codified in state law, an Indian child's Indian tribe, not the state, gets to determine who qualifies as the child's "extended family member."³⁰ SB 354, however, did not grant tribal extended family members the same right to seek an exemption as it did for the relatives of non-Indian children. This bill fills that gap. According to the California Tribal Families Coalition, a co-sponsor of this bill, "a critical barrier to the placement with their families are home approval standards with strict requirements regarding criminal history," and this bill will "remove barriers for children to be placed with relatives and those with family-like relationships."

Second, SB 824 extends DSS's discretion to grant an exemption for the placement of a child with a nonrelative family member, who is someone not related to the child by blood but with whom the child has a family-like or mentoring relationship.

According to the Children's Law Center (CLC), a sponsor of the bill, "SB 824 will address barriers to placement with [nonrelative extended family members] that do not pose a risk to the health and safety of the child by ensuring that any existing relationship between a [nonrelative extended family member] caregiver and a child is considered in decisions regarding home approval and placement," and that "[r]ather than imposing absolute statutory bars to approval and placement, it will allow the agency and the Juvenile Court to make individualized determinations regarding the appropriateness of a placement based on the facts of a case," which "undoubtedly serves the best interests of the child."

Together, these measures are intended to keep children, whenever it is safe to do so, within their communities, tribes, and families and found families.

SUPPORT

California Tribal Families Coalition (co-sponsor)
Children's Law Center of California (co-sponsor)

²⁹ Health & Saf. Code, § 1522(g)(2)(A)(iv).

³⁰ 25 U.S.C. § 1903(2); Welf. & Inst. Code, § 224.1(c).

Legal Services for Prisoners with Children (co-sponsor)
Starting Over, Inc. (co-sponsor)
Underground Scholars Initiative – Riverside (co-sponsor)
Alliance for Children’s Rights
California Alliance of Caregivers
California Lawyers Association, Family Law Section
Communities Reunited for Restorative Youth Justice
County of Sacramento
County Welfare Directors Association
East Bay Family Defenders
Los Angeles Dependency Lawyers, Inc.
Public Counsel
Smart Justice California

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 578 (Ashby, 2023) requires a social worker to report on, and a juvenile court to consider, the potential harms to a child when considering whether to remove a child from their parent or guardian’s custody. SB 578 is pending before the Senate Appropriations Committee.

Prior Legislation:

SB 354 (Skinner, Ch. 687, Stats. 2021) among other things, authorized a juvenile court to order the placement of a child with a relative, regardless of the status of any criminal exemption or resource family approval, if the court finds that the placement does not pose a risk to the health and safety of the child.

SB 677 (Holden, 2021) would have required DSS to convene a working group to make recommendations and propose revised regulations to expedite the criminal record exemption process; required DSS to post information on its website concerning applications for criminal records exemptions; and prohibited 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. SB 677 died in the Assembly Appropriations Committee.

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.

PRIOR VOTES:

Senate Human Services Committee (Ayes 4, Noes 0)
