

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Lisa Calderon, Chair

AB 1283 (Stone) – As Amended April 15, 2021

SUBJECT: Resource families: hearings

SUMMARY: Adopts changes to further facilitate implementation of Continuum of Care Reform (CCR) specifically as it relates to criminal background checks for tribally approved homes (TAH), the appeals process for resource family applicants, and temporary exclusions from community care facilities. Specifically, **this bill:**

- 1) Deletes the existing purpose of a tribe or tribal organization’s requirement to submit to the Department of Justice (DOJ) fingerprint images on behalf of certain individuals, as specified, and, instead, clarifies that this requirement is for the purpose of obtaining the individual’s full criminal record, as defined in current law
- 2) Revises the definition of “good cause” to pertain to the late filing of an appeal to a decision, as specified.
- 3) Declares that “good cause” for failure to appear at a hearing shall be defined by the California Department of Social Services (CDSS) in written directives or regulations, as required by provisions of this bill.
- 4) Clarifies that an appeal, rather than an action, is subject to dismissal if a resource family, applicant, excluded individual, or individual who is the subject of a criminal record exemption denial or rescission does not file an appeal to a notice of action or exclusion order within the prescribed time. Further, expands the circumstances under which the appeal is subject to dismissal to include instances where the individual, as specified, fails to appear at the hearing without good cause.
- 5) Prohibits a temporary exclusion of an individual following a county’s denial of an application for resources family approval, rescission of approval, or denial or rescission of a criminal record exemption from being imposed, as set forth in the written directives or regulations adopted by CDSS, as specified in current law.
- 6) Deletes language redundant of current law related to denial of a resource family application and rescission of an approval of a resource family, as specified.
- 7) Permits CDSS and a county 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.
- 8) Makes technical and conforming changes.

EXISTING LAW:

- 1) Establishes a state and local system of child welfare services (CWS), including foster care, for children who have been adjudged by the court to be at risk of abuse and neglect or to have been abused or neglected, as specified. (Welfare and Institutions Code Section [WIC] 202)

- 2) States that the purpose of foster care law is to provide maximum safety and protection for children who are currently being physically, sexually, emotionally abused, neglected, or exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm. (WIC 300.2)
- 3) Requires CDSS, in consultation with county child welfare agencies, foster parent associations, and other interested community parties, to implement a unified, family friendly, and child-centered resource family approval (RFA) process to replace the existing multiple processes for licensing foster family homes, certifying foster homes by licensed foster family agencies, approving relatives and nonrelative extended family members as foster care providers, and approving guardians and adoptive families. (WIC 16519.5(a))
- 4) Defines “tribally approved home” (TAH) as a home that has been licensed or approved by an Indian child’s tribe, or a tribe or tribal organization designated by the Indian child’s tribe, for foster care or adoptive placement of an Indian child using standards established by the child’s tribe, as specified. Further, declares that a TAH is not required to be licensed or approved by the state or county and is equivalent to a state-licensed or county-licensed or approved home, including an approved resource family home. (WIC 224.1(r))
- 5) Requires a tribal agency to submit to DOJ fingerprint images and related required information of an individual applying with the tribal agency as a prospective foster parent or adoptive parent, any adult who resides or is employed in the home of an applicant, any person who has a familial or intimate relationship with any person living in the home of an applicant, or employee of the child welfare agency who may have contact with a child, for the purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which DOJ establishes that the person is released on bail on their own recognizance pending trial or appeal. (Penal Code Section [PEN] 11105.08(b))
- 6) Defines “resource family” as an approved caregiver and as an individual or family that has successfully met both the home environment assessment standards and the permanency assessment criteria 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. (WIC 11400(z)(2)(ae) and WIC 16519.5(c)(1))
- 7) Permits an applicant for approval or for a criminal record exemption to file a written appeal within 90 days of service of a notice of action, and, further, permits a resource family, excluded individual, or individual who is the subject of a criminal record exemption rescission to file a written appeal within 25 days of service of a notice of action or exclusion order. (WIC 16519.6(d))
- 8) Permits CDSS to exclude an individual, as specified, from presence in any resource family home, from employment in, presence in, and contact with clients of any facility licensed by the department or certified or approved by a licensed foster family agency, and from holding the position of member of the board of directors, executive director, or officer of the licensee of any facility licensed by CDSS. (WIC 16519.6(g)(1))
- 9) Permits CDSS, upon a finding of noncompliance, to 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 may be placed with the resource

family. Further, affords the resource family or applicant the due process afforded by current law. (WIC 16519.6(i) and Health and Safety Code Section [HSC] 1517(c)(6) and (d))

- 10) Requires, if CDSS requires a foster family agency to deny an application or rescind the approval of a resource family, CDSS to serve an order of denial or rescission notifying the resource family, applicant, and foster family agency of the basis of the department's action and of the right to a hearing. (WIC 16519.6(i)(1) and HSC 1517(d))
- 11) Requires CDSS' order of the application denial or rescission of the approval to remain in effect until a hearing is completed and the department has made a final determination on the merits. (WIC 16519.6(i)(2), HSC 1517(d), and HSC 1517(d))
- 12) Deems a foster family agency's failure to comply with the department's order to deny an application or rescind the approval of a resource family by placing or retaining a child in care as grounds for disciplining the foster family agency, as specified. (WIC 16519.6(i)(3) and HSC 1517(d))
- 13) Permits a county or CDSS to institute or continue an administrative proceeding against a resource family, applicant, or individual who is the subject of a criminal record exemption denial or rescission upon any ground, as specified, enter an order denying an application or rescinding the approval of a resource family, exclude an individual, issue a temporary suspension order, or otherwise take disciplinary action against a resource family, applicant, or individual who is the subject of a criminal record exemption denial or rescission notwithstanding any resignation, withdrawal, forfeiture, surrender of approval, or denial or rescission of the approval by a foster family agency. (WIC 16519.6(m)(1))
- 14) Permits CDSS to institute or continue an administrative proceeding against an excluded individual upon any ground, as specified, enter an order to exclude an individual, or otherwise take disciplinary action against an excluded individual, notwithstanding any resignation, withdrawal, surrender of approval, or denial or rescission of the approval by a foster family agency. (WIC 16519.6(m)(2))
- 15) Requires DOJ to disseminate certain information whenever state summary criminal history information is initially furnished for purposes of employment, licensing, or certification. (PEN 11105(m))
- 16) Requires CDSS, county adoption agencies, or licensed adoption agencies to require each person who files an application for adoption to be fingerprinted and, further, requires those entities to secure from an appropriate law enforcement agency any criminal record of that person to determine whether the person has ever been convicted of a crime other than a minor traffic violation. (Family Code Section 8712(a))

FISCAL EFFECT: Unknown

COMMENTS:

Child welfare services: California's CWS system exists to protect children from abuse and neglect, and in doing so, provides for their health, safety, and overall well-being. When suspicions of abuse or neglect arise, often as a result of a report by a mandated reporter like a doctor or teacher, Child Protective Services is tasked with investigating the report. If the allegation of abuse

or neglect is substantiated, it is then determined whether it is in the best interest of the child to remain in their parent's custody or be placed within the CWS system. If a child is suspected to be at risk of neglect, abuse, or abandonment, the juvenile court holds legal jurisdiction, and the CWS system appoints a social worker to ensure that the needs of a youth are met. Through CWS, multiple opportunities arise for the judicial system to evaluate, review, and determine the custody of the child, or determine the best out-of-home placement for the youth, which includes foster care or placement with relatives. As of January 1, 2021, there were 59,716 youth placed in the CWS system.

Continuum of Care Reform: In recent years, California has enacted legislation, known as CCR, to improve placement and treatment options for youth in foster care. AB 403 (Stone), Chapter 773, Statutes of 2015, sponsored by CDSS, sought to improve outcomes for children and youth served by the CWS system by working to ensure that foster youth have their day-to-day physical, mental, and emotional needs met, that they have the opportunity to grow up in permanent and supportive homes, and have the opportunities necessary to become self-sufficient and successful adults. CCR also sought to reduce the use of congregate care as a frequently used placement option for youth, as data have demonstrated that youth placed in congregate care settings experience poorer outcomes than youth placed in family settings. Subsequent legislation to further facilitate implementation of CCR efforts include AB 1997 (Stone), Chapter 612, Statutes of 2016, AB 404 (Stone), Chapter 732, Statutes of 2017, AB 1930 (Stone), Chapter 910, Statutes of 2018, AB 819 (Stone), Chapter 777, Statutes of 2019, and AB 2944 (Stone), Chapter 104, Statutes of 2020.

Resource Family Approval: process and requirements: The RFA program, authorized by AB 340 (Hancock), Chapter 464, Statutes of 2007, began as a pilot program in five counties, including Santa Barbara, San Francisco, San Luis Obispo, Kings, and Santa Clara from November 2013 to August 2014. Between January and July of 2016, an additional 9 counties volunteered to implement RFA, and on January 1, 2017, SB 1013 (Senate Committee on Budget), Chapter 35, Statutes of 2012, implemented RFA statewide. The RFA process is a unified, family-friendly, and child-centered process that combines elements of foster parent licensing, relative approval, and adoption/guardianship approval processes. The RFA process includes a psychosocial assessment, home environment check, and training for all resource families, including relatives, in order to ensure that caregivers are equipped to best meet the needs of youth in foster care. RFA is also a route to direct permanency for caregivers who wish to adopt or be guardians of youth in care, as the RFA process includes elements required by both the adoption and guardianship processes.

Prior to approval as a resource family, applicants must complete 12 hours of pre-approval caregiver training to ensure caregivers have the necessary knowledge and skills to provide adequate care to foster youth. The training often includes: an overview of the CWS and probation systems; the effects of trauma, including grief, loss, and abuse and neglect, on a child's development and behavior; health issues in foster care; the rights of a child in foster care; and the cultural needs of children, among others. Current law also requires approved resource families to complete a minimum of eight hours of caregiver training annually to ensure resource families are equipped on an ongoing basis to provide for the needs of youth in their care. Annual caregiver training includes topics such as: health issues in foster care; promoting normal childhood experiences; permanence; well-being; and the cultural and education needs of youth, among other topics.

Criminal background checks: Certain individuals, including licensees, adult residents, certain volunteers, and employees of community care facilities who have contact with clients are required

by law to undergo a criminal background check and obtain a criminal record clearance or exemption. Resource family applicants are among those required to submit to a criminal background check. Background checks require individuals to submit fingerprints, which are used by DOJ to search for any criminal record history. If a person does not have a criminal history, DOJ forwards a clearance notice to the applicant and licensee of a facility, as well as to the CDSS Community Care Licensing Division's (CCLD) Criminal Background Check Bureau (CBCB). If an applicant does have a criminal history, DOJ sends a record transcript to CBCB, detailing the person's arrests and convictions. CBCB is responsible for verifying whether the individual is eligible for a criminal background exemption or if the individual has committed a crime for which an exemption may not be offered. An exemption is required when an individual has been convicted of any crime other than a minor traffic violation, and crimes for which an exemption cannot be granted (called non-exemptible crimes) include convictions for murder, kidnapping, possession of child pornography, sexual exploitation of a child, elder or dependent abuse, and arson, among others.

Tribally-approved homes (TAH): Because RFA combined aspects of the adoption/guardianship process with aspects of the foster care system, resource family applicants are subject to adoptions-level background checks, as is described in Family Code Section 8712. However, for TAHs, current law still requires background checks be conducted pursuant to Penal Code Section 11105(m), which refers to the traditional background checks used for foster family homes prior to the adoption of RFA. As such, if a TAH wishes to adopt a child, the home would need to undergo subsequent fingerprinting and an additional, more thorough background check. The provisions of this bill would clarify that TAHs are required to undergo adoptions-level background checks in order to streamline the background check and adoption process for TAHs.

Due process rights: Current law requires CDSS to implement due process procedures for the RFA process, which includes: providing a statewide fair hearing process for application denials, rescissions of approval, exclusion actions, or criminal record exemption denials or rescissions by a county or CDSS; providing an excluded individual with due process; and, amending CDSS' state hearing procedures and regulations, or using the Administrative Procedure Act, when applicable, as necessary for the administration of the program. If a county denies an application for RFA, the county must provide the applicant with a notice of action (NOA), and the applicant may file a written appeal within 90 days of being served the NOA. A resource family, excluded individual, or individual who has been the subject of a criminal record exemption rescission can file a written appeal within 25 days of service of a notice of action or an exclusion order.

Under current law, a county's action is final, or for matters set before the State Hearings Division, an action is subject to dismissal if the resource family, applicant, excluded individual, or person who is the subject of a criminal record exemption denial or rescission does not file an appeal to the notice of action or exclusion order within the prescribed time. The provisions of this bill would clarify that the appeal, rather than the action taken by CDSS or a county, is subject to dismissal, and would expand the circumstances for which the appeal can be dismissed to include instances where the individual withdraws the appeal or fails to appear at the hearing without good cause. The provisions of this bill would also permit "good cause" for failure to appear at the hearing to be defined by CDSS in written directives or regulations.

Need for this bill: The provisions of this bill seek to further implement the goals of CCR by requiring TAHs submit to adoptions-level criminal background checks, by clarifying that an appeal, rather than an action is subject to dismissal, by expanding the instances for which the

appeal can be dismissed to include instances where an individual withdraws the appeal or fails to appear at the hearing without good cause, and by permitting “good cause” for failure to appeal to be defined by CDSS in written directives or regulations. Finally, this bill requires a temporary exclusion to be imposed as set forth in written directives or regulations, and repeals language redundant of current law.

According to the author, “[This bill] 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, and remove unnecessary foster family agency references from welfare and institutions code.

“This bill seeks to improve implementation of CCR by making simple, technical changes to the code that clarify language and RFA procedures for child welfare practitioners. In doing so, this 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.”

PRIOR AND RELATED LEGISLATION:

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

AB 819 (Stone), Chapter 777, Statutes of 2019, furthered CCR efforts made by AB 403, AB 1930, AB 1997, AB 404, and AB 1930.

AB 1930 (Stone), Chapter 910, Statutes of 2018, furthered CCR efforts made by AB 403, AB 1997, and AB 404.

AB 404 (Stone), Chapter 732, Statutes of 2017, furthered CCR efforts made by AB 403 and AB 1997.

AB 1997 (Stone), Chapter 612, Statutes of 2016, furthered CCR efforts made by AB 403.

AB 403 (Stone), Chapter 773, Statutes of 2015, implemented CCR recommendations to better serve children and youth in California’s child welfare services system

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

Analysis Prepared by: Kelsy Castillo / HUM. S. / (916) 319-2089