

May 5, 2022

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 22-33

The purpose of this All County Letter is to address recently passed legislation Senate Bill 354 and its implementation for county child welfare, juvenile probation departments, and Title IV-E Agreement Tribes.



KIM JOHNSON
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



GAVIN NEWSOM
GOVERNOR

May 5, 2022

ALL COUNTY LETTER NO. 22-33

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHIEF PROBATION OFFICERS
ALL COUNTY CALWORKS PROGRAM SPECIALISTS
ALL COUNTY CONSORTIUM PROJECT MANAGERS
ALL COUNTY CHILD WELFARE SERVICES PROGRAM MANAGERS
ALL COUNTY ELIGIBILITY SUPERVISORS
ALL COUNTY FOSTER CARE MANAGERS
ALL TITLE IV-E AGREEMENT TRIBES
COUNTY WELFARE DIRECTORS ASSOCIATION

SUBJECT: [SENATE BILL 354](#) (CHAPTER 687; STATUTES OF 2021)

REFERENCE: [HEALTH AND SAFETY CODE 1521.7](#); [1522](#); [1568.09](#); [1569.17](#); [1596.871](#); [WELFARE AND INSTITUTIONS CODE 224.1](#); [309](#); [319](#); [361.2](#); [361.4](#); [361.45](#); [362.7](#); [601](#); [602](#); [727.05](#); [11461.3](#); [16519.5](#); [16519.6](#)

The purpose of this All County Letter (ACL) is to address recently passed legislation Senate Bill (SB) 354 and its implementation for county child welfare and juvenile probation departments.

BACKGROUND

Effective January 1, 2022, SB 354 removes barriers to placement with relatives. The bill expands eligibility for criminal record exemption requests allowing for more child specific Resource Family Approvals (RFA), expands eligibility to the Approved Relative Caregiver (ARC) funding, and clarifies state laws regarding the juvenile court's authority to place children with relatives. Additionally, it ensures counties assist relatives and nonrelative extended family members (NREFMs) with obtaining necessary provisions for an emergency placement of a relative child. Finally, it expands eligibility for the simplified criminal exemption process and explicitly excludes all infractions from criminal exemption requirements.

COURT AUTHORIZED PLACEMENTS

While the juvenile court has previously had the ability to authorize placement of a child into a home, SB 354 provided further clarifications to this authority. One such clarification includes the juvenile court's option to authorize a child to be placed with a relative prior to the completion of a criminal record exemption process or the approval of a relative as a resource family if the court finds the placement would not jeopardize the health or safety of the child. It is still required in these situations for the county or tribe to initiate the approval process for RFA or for a Tribally Approved Home (TAH).

Senate Bill 354 further clarified the juvenile court's ability to authorize placement of a child with a relative if the relative has been denied approval as a resource family if it would not jeopardize the health or safety of a child. These caregivers are not required to adhere to the standards of the RFA program. All laws and regulations related to oversight and monitoring of the child however remain in effect.

Emergency Placement

Senate Bill 354 makes several changes to the law to facilitate emergency placement of a child with a relative, NREFM, or in the case of an Indian child, an extended family member as defined by Welfare and Institutions Code (WIC) [section 224](#). This includes the requirement the county of jurisdiction make reasonable efforts to assist a family member or NREFM in acquiring necessary items in order to accept placement of a child. It also clarifies the court's role in authorizing emergency or temporary placements.

When an emergency removal of a child from their home is necessary, the child welfare services (CWS) agency has an obligation to locate any family members to determine if the child can be placed with a relative, NREFM, or extended family member of an Indian child in order to preserve and maintain family connections. In these circumstances, family members are temporarily authorized to receive placement of a child on an emergency basis, yet they may have had little to no time to prepare for bringing the child into their home. An "emergency placement" means a placement of a child or nonminor dependent (NMD) with a relative, NREFM, or extended family member, in the case of an Indian child, prior to RFA or TAH approval, pursuant to [WIC sections 309, 361.45, or 727.05](#), and subject to the requirements at [WIC sections 361.4 or 727.05](#).

This bill adds paragraph (3) to subdivision (d) of WIC section 309, which states that if the sole issue preventing an emergency placement of a child with a relative, NREFM, or extended family member of an Indian child is a lack of resources, including but not limited to physical items such as cribs and car seats, the county agency shall use reasonable efforts to assist the relative, NREFM, or extended family member of an Indian child in obtaining the necessary items within existing available resources. An ACL detailing requirements for reasonable efforts and making connections to culturally relevant services for Indian children is forthcoming.

Additionally, SB 354 clarifies that the juvenile court may authorize emergency or temporary placements of children with relatives, NREFMs, or extended family members in the case of an Indian child, regardless of the status of any criminal exemption request or status of RFA, or a TAH in the case of an Indian child, if the court finds that the placement does not pose a risk to the health and safety of the child ([WIC section 319\(h\)\(3\)](#), [361.4\(b\)\(6\)](#) and [727.05\(c\)\(6\)](#)). Accordingly, the county CWS or probation agency cannot deny an emergency placement based solely on the fact that California Law Enforcement Telecommunications System results contain criminal history information, if the juvenile court authorizes the placement. As a reminder, for RFA applicants, if a child is placed prior to the approval, the RFA process must be completed within 90 days of placement, unless good cause exists, per [WIC section 16519.5](#).

These new requirements also apply to any extensions of temporary or emergency placements, which must be approved by the deputy director or director of the county child welfare department no less frequently than every 60 days. By easing previous restrictions, providing additional resources, and prioritizing emergency and temporary placements with relatives NREFMs, or extended family members in the case of an Indian child, caseworkers can avoid placement delays and reduce further trauma to the child.

Emergency and Temporary Placements for Probation

Existing law, WIC section 727.05, authorizes the probation agency to make an emergency placement of a minor ordered into its care, custody, and control with a relative or NREFM. [Assembly Bill \(AB\) 819](#) (Statutes of 2019, Chapter 777) allows the probation officer, with that authority, to make an emergency placement without a placement order. The youth is still required to be adjudged by the court to be a ward under the provision of WIC sections [601/602](#) per WIC section 727(a)(1)-(3) if the youth falls within the requirements to remain in custody. In practice, if a youth is detained for the first time, ensure the criteria for emergency placement per WIC section 727.05 (b) is completed and provide the information to the court as soon as the child is deemed a ward for emergency placement until the RFA process is completed. For funding information please see [ACL 21-88](#) and [ACL 19-84](#).

TRIBALLY APPROVED HOME CRIMINAL BACKGROUND CHECKS

A TAH is a home licensed or approved by an Indian child's tribe/tribal agency or a tribe/tribal organization designated by the Indian child's tribe, as defined in subdivision (r) of the [WIC section 224.1](#). Although federally recognized tribes are not subject to state approval standards when approving a TAH and have the independent authority to approve homes using the tribe's own socially and culturally appropriate standards, TAHs are subject to the background check requirements set forth in the [Health and Safety Code \(HSC\) sections 1522](#) and [1522.1](#) for purposes of receiving federal IV-E foster care maintenance payments. The SB 354 makes changes that include TAHs in the new criminal background check criteria outlined in HSC section 1522, allowing TAH applicants to receive an exemption based on the revised list of

non-exemptible crimes and to allow more TAH applicants to access the simplified exemption process.

If a tribe chooses not to complete their own criminal background check when assessing a family to be a TAH, the tribe can request that the county or the California Department of Social Services (Department) conduct the background check component on their behalf. The county or Department shall ensure there is ongoing communication with the Indian child's tribe when reviewing criminal history and evaluating a request for a criminal record exemption prior to making an exemption determination.

The [Background Assessment Guide \(BAG\)](#) may be used as a guide for an agency conducting background checks in accordance with federal IV-E standards, including tribes and counties conducting background checks on behalf of a tribe.

RESOURCE FAMILY APPROVAL

The [RFA Written Directives \(WDs\)](#) will be updated to incorporate the language of SB 354. Until WD Version 8 is released, counties shall follow the directives outlined in this ACL, which is issued pursuant to the authority in WIC section 16519.5(f)(1), as it relates to RFA. Additionally, the approval certificate (RFA 05A) will be updated to reflect the changes from SB 354.

No Minimum Income Requirement

As a reminder, there is no minimum income requirement for the RFA program. The SB 354 clarifies that in the case of a relative or NREFM applying for RFA, while applicants are still required to provide proof of income, the requirement to demonstrate the financial stability within the household can be waived on a case-by-case basis. For example, many relatives may be on a limited income or receive financial assistance, and their limited income should be neither a barrier to approval nor a reason for denial.

Infractions

The SB 354 amended language in HSC section 1522 from "minor traffic violation" to "an infraction." This change provides clarification that any conviction other than a misdemeanor or felony conviction, i.e. infractions, do not require a criminal record exemption.

Non-Exemptible Convictions

The SB 354 amended the criminal background check standards for RFA as specified in WIC section 16519.5 and HSC section 1522. As always, all applicants and adults residing or regularly present in the home are required to obtain a criminal record clearance or exemption. Prior to the passage of SB 354, if the criminal records check indicated the individual was convicted of a non-exemptible crime described in HSC section 1522(g)(2)(A), the individual was denied a criminal record exemption and approval, as applicable.

Effective January 1, 2022, SB 354 authorizes applicants and associated individuals listed above, who were convicted of crimes previously listed as “non-exemptible” for life under HSC section 1522(g)(2)(A)(i)-(ii), to complete the standard criminal record exemption process, provided the conviction(s) was sustained more than 10 years prior to the review of the application **and** provided the conviction(s) does not fall under the Adam Walsh Child Protection and Safety Act as described in HSC section 1522(g)(2)(A)(iii).

This change in the law aligns California’s non-exemptible crimes more closely with the list of federal non-exemptible crimes under the Adam Walsh Child Protection and Safety Act, while expanding the list of crimes for which an individual is eligible to request a criminal record exemption and potentially be approved to care for foster children as a Resource Family. (Please refer to the updated [RFA Background Assessment Guide \(BAG\)](#) section 111, which is located on the [RFA website](#)). As a reminder, please always refer to the RFA BAG version found on the website to ensure the correct version is being utilized.

Simplified Exemption Process

The HSC section 1522 provides a rebuttable presumption that an individual is entitled to an exemption (i.e., simplified exemption process) if the results of their live scan fingerprint check and self-disclosures meet specified criteria (if eligible, the simplified exemption process allows the county to grant the exemption without any additional documentation from the individual). Prior to SB 354, these criteria included (1) No misdemeanor convictions within the last five years; and (2) No felony convictions within the last seven years. Effective January 1, 2022, SB 354 shortened these timelines for granting an exemption through the simplified process to include criminal history that meets the following criteria:

- No misdemeanor conviction(s) within the last three years.
- No felony conviction(s) within the last five years.

As always, the simplified exemption process is not available to anyone with the following conviction history:

- Conviction for a crime listed at HSC section 1522(g)(2)(A) (State and Federal Non-Exemptible Crimes).
- Misdemeanor conviction for statutory rape, as defined in section 261.5 of the Penal Code.
- Misdemeanor conviction for indecent exposure, as defined in section 314 of the Penal Code.
- Misdemeanor conviction for financial abuse against an elder, as defined in section 368 of the Penal Code.

Notwithstanding the fact that an individual meets the simplified exemption criteria, statute continues to provide discretion to require the standard exemption process if it is necessary to protect the health and safety of a child.

Criteria for Relatives

In specific circumstances, a county may decide to grant a child specific approval. This is a county decision and is not an option that relatives select. As described in the RFA WDs section 6-07(e), there are limited and narrow circumstances when this option is available for the county. The SB 354 added an additional background check criteria that when applicable, allows for a child specific approval for relatives only.

In addition to the revised list of non-exemptible crimes and the expanded simplified exemption criteria which will apply to all resource family applicants and associated individuals, SB 354 provides additional discretion to consider granting criminal record exemptions *specifically* when an RFA applicant is a relative, which includes an extended family member in the case of an Indian child, and the applicant(s) is being approved to care for a specific child. Effective January 1, 2022, HSC section 1522(g)(2)(A)(iv) authorizes the review of criminal record exemption requests from relative RFA applicants, and adults residing in the relative applicant's home, notwithstanding a conviction for a crime described at HSC section 1522(g)(2)(A)(iii), provided the approval is to care for a specific child and the applicant/resident does not have a felony conviction within the last five years for any of the following crimes:

- Child abuse or neglect.
- Spousal abuse.
- Rape.
- Sexual assault.
- Homicide; or
- Any other crime against a child, including child pornography.

A relative applicant, or other adult residing in the relative applicant's home, who meets the above criteria shall submit an exemption request through the standard exemption process for evaluation. As with all cases, an exemption may be granted if the individual submits substantial and convincing evidence that they are rehabilitated and of present good character. An exemption granted pursuant this section shall be valid solely for purposes of the child specific approval and cannot be transferred to another approved home or licensed facility.

Please be reminded that an exemption shall not be granted through the simplified exemption process if there is a conviction for a crime listed at HSC section 1522(g)(2)(A) (State and Federal Non-Exemptible Crimes) or at HSC section 1522(g)(2)(B) (misdemeanor convictions for HSC sections 261.5, 314, and 368 of the Penal Code). See section on *Simplified Exemption Process* above.

This exception is specific to a relative of a child as defined in WIC section 319 and does not include a NREFM as defined in WIC section 362.7. The NREFMs are not eligible to request an exemption under this section for relatives. For guidance regarding updates when the county granted a child specific approval to a relative who subsequently requests a placement of a sibling, counties will refer to the WDs section 6-07(e)(4).

Assembly Bill 686 and Indian Community Standards

In the case of an Indian child for whom the Indian child's tribe is not exercising its right to approve the home, the home is subject to the RFA approval standards. In such cases, the exception for relatives can be applied when the applicant is seeking approval as a resource family for a specific Indian child. The county shall ensure there is ongoing collaboration with the tribe when evaluating a criminal record exemption request. Although the SB 354 statutory language does not explicitly include an "extended family member" of an Indian child as defined in section 1903 of the federal ICWA, California's definition of "relative" includes individuals related to a child by "affinity within the fifth degree of kinship," which can be broadly applied to encompass most extended family members if the applicant is not a relative of the Indian child.

Changed Circumstances, Petitions for Reinstatement, and Excluded Individuals

Individuals with Prior Denial or Rescission for a Conviction that is Newly Exemptible (No Appeal to a Notice of Action and No Decision and Order Issued by the Department)

The WIC section 16519.5(c)(7) and RFA WDs section 5-03B(m) state that a county shall cease any review of an application if the applicant had a prior application denial by the Department or a county within the last year, or if the applicant has had a previous rescission, revocation, or exemption denial or exemption rescission by the Department or a county within the last two years. However, a county may continue processing an application if it has determined the applicant is not an excluded individual and the reasons for the previous denial, rescission, or revocation were due to circumstances or conditions which the applicant shows have either been corrected or are no longer in existence. Therefore, as of January 1, 2022, an applicant may reapply if a recent denial, rescission, revocation, exemption denial, or exemption rescission was because of a conviction that was non-exemptible prior to January 1, 2022, and the applicant is now eligible to request an exemption as a result of SB 354. A county may continue to process the application, provided the applicant has not been excluded by a decision and order issued by the Department. If the previous denial was appealed, a lifetime exclusion may have been issued as a result of the decision and order; this would require the applicant to petition for reinstatement as described below.

Individuals with a Lifetime Exclusion Order issued by the Department (Appealed Cases and/or Cases with a Decision and Order Issued by the Department)

Pursuant to WIC section 16519.6(g) and RFA WDs section 12-22, an individual who has been excluded by the Department from residing or being present in any Resource Family home may petition the Department for reinstatement after one year has elapsed from the effective date of the exclusion order. If an individual was previously denied a criminal record exemption for a conviction that was non-exemptible prior to January 1, 2022, and appealed that decision at the time, that individual may have been excluded by the Department. If that is the case, and the individual is now eligible to petition for reinstatement and is also eligible for an exemption as a result of SB 354, the individual

must petition the Department and be reinstated prior to the county's review of the criminal record exemption request pursuant to the new criteria of SB 354.

Questions or requests for clarification regarding petitions for reinstatement should be directed to the assigned county RFA liaison or the SB 354 mailbox at SB354@dss.ca.gov.

FUNDING

Emergency Caregiver (EC) Funding

As outlined in [ACL 21-88](#), children placed with families (related or non-related) on an emergency or compelling reason basis pursuant to WIC sections 309, 361.45, 727.05 or 16519.5 and have a RFA or TAH application pending, qualify for EC funding. This includes children placed with a relative as a result of the juvenile court authorizing the placement prior to the completion of a criminal record exemption process or the approval of a relative as a resource family. The beginning date of aid is the date of placement into the home. The EC funding is available for 120 days from the date of placement and up to 365 days with documented good cause for the delay for fiscal year 21/22. For further information regarding the EC funding, counties can review [ACL 19-24](#) for Frequently Asked Questions related to EC funding eligibility. Further guidance regarding EC funding for upcoming fiscal years will be released soon.

Funding for Relatives

The SB 354 amended the [WIC section 11461.3](#) by adding subsection (I), which allows certain placements with relatives to receive ARC funding if the placement is ineligible for both EC funding pursuant to [WIC section 11461.36](#) and Aid to Families with Dependent Children-Foster Care (AFDC-FC) funding due to the denial of RFA . Therefore, ARC payments must be made on behalf of children or NMDs placed with relatives, as defined in WIC section 319, when the placement has been authorized by the juvenile court **and** the relative has been denied approval as a resource family (prior to the home being approved or denied as a resource family, the child would receive Emergency Caregiver funding). Additionally, ARC payments must be made on behalf of a child/NMD placed with a relative who is granted child specific approval as a resource family and who has a criminal record exemption for a crime that is not federally exemptible. In such circumstances, the child will not be eligible for AFDC-FC while the child is placed in the home of the relative. The beginning date of aid for these cases will be the date of denial of the Resource Family application or the date child specific approval is granted provided all other ARC eligibility criteria are met. All other eligibility requirements continue to apply for the ARC program.

Counties/IV-E tribes and probation departments shall keep the court order authorizing the placement in the child's court file. A county fiscal letter will be forthcoming with claiming guidance.

The Kinship Guardianship Assistance Payment (Kin-GAP) Program

In the case when guardianship with a relative is ordered as a permanent plan for a child who is placed in a court authorized placement with a relative caregiver who was denied approval as a resource family, the relative guardian will not qualify for Kin-GAP assistance. Current state law requires the youth to be placed in an approved home for six months prior to establishing Kin-GAP.

Adoption Assistance Program (AAP)

In the case when adoption is ordered as a permanent plan for a child who is placed in a court authorized placement with a caregiver who was denied RFA, the prospective adoptive parents may receive AAP benefits on behalf of an AAP eligible child and will be eligible to receive AAP funding if [WIC section 16120\(h\)](#) is met.

Current state statute regarding receipt of AAP benefits on behalf of an AAP eligible child does not allow agencies to grant criminal record exemptions to individuals who were convicted of some previously non-exemptible crimes under specified circumstances.

To be eligible to receive AAP benefits in California, the WIC section 16120(h) requires the prospective adoptive parent, or any adult living in the prospective adoptive home, to have completed the criminal background check requirements pursuant to [section 671\(a\)\(20\)\(A\) and \(C\) of Title 42 of the United States Code](#). Therefore, individuals granted a criminal record exemption based on the provisions outlined in SB 354 may not be eligible to AAP due to not meeting federal requirements. This language applies to all AAP cases regardless of the child's eligibility for Title IV-E or state/non-federal funding.

DATA COLLECTION AND REPORTING

The SB 354 added [HSC section 1521.7](#) which will require the Department to report specific data to the Legislature regarding RFA applicants. In order to report accurately, the counties will be instructed to track specific data as of January 1, 2023, such as the demographics of RFA applicants, RFA applicants who were granted a criminal record exemption request based on the amendments of SB 354, denial of resource family approvals due to criminal record exemption request denials, and appeals requested as a result of these specific denials.

The functionality required to collect the data outlined in SB 354 will be in CWS-CARES Version 1. Once CWS-CARES Version 1 is released, the CWS-CARES Version 1 must be exclusively used to collect RFA data for California to remain in compliance with the Federal Comprehensive Child Welfare Information System; Final Rule (45 CFR Part 95 and Chapter III; section 1355.52(a)(3)). Until CWS-CARES Version 1 is released, the counties will be responsible for manually tracking the data required in this section. A forthcoming ACL will be released as the January 1, 2023 date approaches to provide the counties with instructions and policy for efficient documentation and reporting.

The Department will provide a Frequently Asked Question document related to SB 354 in the future. If you have any questions or need additional guidance regarding the information in this letter, contact the Resource Family and Eligibility Support Bureau at (916) 651-1101 or at SB354@dss.ca.gov. For specific questions regarding Kin-GAP, please contact FC-KGeligibility@dss.ca.gov. For AAP related questions, please contact the Adoptions Services Branch at AAP@dss.ca.gov.

Sincerely,

Original Document Signed By

ANGIE SCHWARTZ
Deputy Director
Children and Family Services Division