

SB 824: Frequently Asked Questions

Legislative History

1. This bill is being referred to as SB 354 clean-up. What were the changes in SB 354?

SB 354 (Senator Skinner, 2021) promoted placement with relatives for a child in foster care. Specifically, SB 354:

- Addressed barriers some families were facing in getting “resource family approval” – California’s version of a foster care license – when they had a criminal background but there was no child safety risk;
- Clarified the court’s jurisdiction to order placement into the home of a relative when the court finds there is no child safety risk; and
- Added requirements in the law that the child welfare agency use best efforts to provide tangible assistance whenever necessary to support placement with family members and non-relative extended family members (“NREFMs”) – individuals who are not relatives but who have a strong connection to the family.

2. How does SB 824 build upon SB 354?

SB 354 has resulted in stories across the state of children remaining with loving, committed relatives who would have been ineligible for resource family approval under prior law. However, after a year of implementation there are identified gaps in the law that are still precluding children in foster care from being placed with their families and in their communities. SB 824 addresses three areas to address these gaps and fully realize the vision of SB 354:

First, SB 824 promotes stability and connections by ensuring that children placed with relatives or NREFMs can receive financial support after a case closes to permanency.

Under current law, children who are placed with relatives by the juvenile court can receive funding while a case is open, but there are situations where the funding is cut off if the case moves towards permanency – meaning the caregiver becomes a legal guardian or adopts the child(ren). SB 824 would amend the laws governing Kinship Guardianship Assistance Payments (Kin-GAP) and the Adoption Assistance Program (AAP) to ensure that these children can continue to receive financial support once their case closes to guardianship or adoption.

Second, SB 824 expands the important provisions of SB 354 to include NREFMs and (for Indian children) extended family members. Like relatives, NREFMs and extended family members can play a critical role for a child in foster care. Counties have identified potential loving caregivers who are not related to a child, but who have a familial or mentoring connection to the family, yet there is no ability to grant a criminal record exemption or resource family approval because of the caregiver’s criminal history. This also true for the full range of extended family members that may be defined by the tribe of a Native American child in foster care under the Indian Child Welfare Act. SB 824 would amend the law to ensure the child welfare agency

and court have discretion to place and/or approve the home of a NREFM or extended family member when there is no safety risk to the child.

Lastly, SB 824 ensures that criminal record exemptions and allowable funding for extended family members can also be provided to relatives seeking to become tribally approved homes instead of resource family approved homes.

Importance of Kinship Care

3. Why is placement with relatives, NREFMs and extended family members for Indian children so important?

Research shows that placement with relatives, NREFMs and extended family members reduces the trauma of foster care, promotes placement and school stability, increases the likelihood of siblings remaining together, and reduces reliance on congregate care.

For this reason, both federal and state law express a strong preference to place with relatives, NREFMs or extended family members whenever possible. Recently, California also issued state policy committing to adopting a **kin-first culture**: “Kin-first culture exists when every system that engages with families and children has adopted policies, practices, trainings and accountability structures in partnership with families that require every effort be made to keep children safely at home and, if a child must be removed from a home, to partner with the family to figure out where is the safest place within that family for the child to live. **The primary goal of a kin-first system is to partner with families to keep children connected to their communities, family, culture and tribe.** Kin-first culture gives families and communities the opportunity to heal from trauma together.”

<https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2023/23-12.pdf?ver=2023-02-09-163907-567>

Health and Safety Standards

4. Does SB 854 change any of the health and safety standards from SB 354?

No. SB 354 was carefully written and vetted by the Legislature and Administration to ensure that the law could not be construed to allow placement or a resource family home approval where there is an identified health and safety risk to the child(ren). Like SB 354, SB 824 provides counties and tribes with discretion to grant an exemption of currently non-exemptible convictions when there is a family-like relationship between the prospective caregiver and the child, consistent with case law and existing preferences to place children with relatives, NREFMs and extended family members for Indian children.

5. Could these proposed changes result in potential compliance issues with federal requirements under the Adam Walsh Act?

As a condition of the Title IV-E State plan, California must have procedures for criminal background checks. **This bill would not change existing requirements to conduct criminal background checks.** The bill would allow approval of homes where the prospective NREFM or extended family member has a criminal conviction that renders the individual home ineligible for federal funding, such that the state could not seek reimbursement for maintenance payments for that particular child. This would not impact the state's ability to draw down federal funding for other approved homes.

6. Does this process bypass Resource Family Approval (RFA)?

No, the child welfare agency would still be required to do a child welfare and criminal background check, an analysis of whether to grant an exemption if there is a criminal background, and a full resource family home assessment – which includes an in-depth evaluation of the applicants and any adults living in the home, an assessment of the physical space, letters of recommendation and any other information the child welfare agency requests to evaluate the safety of the home.

Similarly, SB 824 would not bypass tribal home approval, including the criminal background check. Tribes have the independent authority to approve foster homes using their own socially and culturally appropriate standards pursuant to the Indian Child Welfare Act, which provides that tribally approved homes are deemed equivalent to licensing or approval by a state.

7. Does this compromise health and safety for children placed with NREFMs (or Indian children placed with extended family members) subject to the revised background check process?

NREFMs and extended family members would undergo the same assessment and background check as is required in existing law, and nothing in the bill would allow placement or approval by the agency or court when there is a health and safety risk.

Importantly, the assumption that placement or approval of a relative, NREFM or extended family member with a certain criminal history would inherently compromise the health and safety of a child assumes a connection between criminal histories and child safety that has not been proven. It also presents a myopic view of health, as it ignores the tremendous mental and emotional health benefits of kinship placement for children and families. Finally, we must acknowledge that Black, Native and Latino families are overrepresented in the foster care system in California, and that the criminal justice system has long had pervasive problems with racism. The current background check process – especially with respect to non-exemptible convictions – has a disparate impact on people of color.