

AMENDED IN ASSEMBLY APRIL 15, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 1283

Introduced by Assembly Member Stone

February 19, 2021

An act to amend Section 11105.08 of the Penal Code, and to amend Sections 10553.12 and 16519.6 of the Welfare and Institutions Code, relating to foster care.

LEGISLATIVE COUNSEL'S DIGEST

AB 1283, as amended, Stone. Resource families: hearings.

Existing law provides for the implementation of the resource family approval process, which replaces the multiple processes for licensing foster family homes, certifying foster homes by foster family agencies, approving relatives and nonrelative extended family members as foster care providers, and approving guardians and adoptive families. Existing law requires the State Department of Social Services to provide a statewide fair hearing process for application denials, rescissions of approval, exclusion actions, or criminal record exemption denials or rescissions by a county or the department. Under existing law, a county's action on an approval 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 individual who is the subject of a criminal record exemption denial or rescission does not file a timely appeal.

This bill would remove the reference to the action before the State Hearings Division being dismissed, and instead, provide that in a matter before the State Hearings Division, an appeal shall be subject to dismissal if an appeal to the notice of action or exclusion order is not

filed within the prescribed time. The bill would also make the county's action final, and the appeal before the State Hearings Division subject to dismissal, if the resource family, applicant, excluded individual, or individual who is the subject of a criminal record exemption denial or rescission withdraws the appeal or fails to appear at the hearing without good cause. Under the bill, good cause for failure to appear at the hearing would be as defined by the department in specified written directives or regulation

Existing law authorizes the department to permanently exclude a resource family parent, applicant, or other individual 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 certain positions with a licensee of any licensed facility, for specified reasons.

This bill would require a temporary exclusion of an individual following a county's denial of an application for resource family approval, rescission of approval, or denial or rescission of a criminal record exemption to only be imposed as set forth in certain written directives or regulations adopted by the department. To the extent the bill would impose new duties on counties, the bill would impose a state-mandated local program.

Existing law authorizes the department, upon a finding of noncompliance with the law governing resource families, 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 who may be placed with the resource family.

This bill would repeal those provisions.

This bill would authorize a county and the department to coordinate the filing of actions related to resource families, file consolidated pleadings, or file a motion to consolidate multiple actions if a matter involves both a county and department action.

Existing federal law, the Indian Child Welfare Act (ICWA), governs the proceedings for determining the placement of an Indian child when that child is removed from the custody of the child's parent or guardian. Existing law requires counties to implement the resource family approval process and authorizes a federally recognized tribe to approve a home for the purpose of foster or adoptive placement of an Indian child pursuant to the ICWA. Existing law authorizes a tribal agency to request from the Department of Justice criminal history information

when evaluating a tribal home for the placement of an Indian child into foster or adoptive care. Existing law requires that a tribal agency submit fingerprint images and related information for specified individuals for the purpose of obtaining information regarding the existence and contents of an individual’s state and federal criminal record, including arrests, convictions, and matters pending trial or appeal.

The bill would instead require a tribe or tribal organization, when licensing or approving a home for the purpose of foster or adoptive placement of an Indian child, to submit fingerprint images and related information to the department for the type and level of background check required for an adoption and would require the department to provide a state and federal level response to the tribe or tribal organization that includes background check information that is required for an adoption.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11105.08 of the Penal Code is amended
- 2 to read:
- 3 11105.08. (a) Notwithstanding any other law, a ~~tribal agency~~
- 4 ~~tribe or tribal organization~~ may request from the Department of
- 5 Justice state and federal-level summary criminal history information
- 6 for the purpose of *licensing or approving a ~~tribal home~~ tribally*
- 7 *approved home, as defined in subdivision (r) of Section 224.1 of*
- 8 *the Welfare and Institutions Code*, for the placement of an Indian
- 9 child into foster or adoptive care.
- 10 (b) A ~~tribal agency~~ *tribe or tribal organization* shall submit to
- 11 the Department of Justice fingerprint images and related
- 12 information required by the Department of Justice of an individual
- 13 applying with the ~~tribal agency~~ *tribe or tribal organization* as a
- 14 prospective foster parent or adoptive parent, any adult who resides
- 15 or is employed in the home of an applicant, any person who has a
- 16 familial or intimate relationship with any person living in the home

1 of an applicant, or employee of the child welfare agency who may
2 have contact with a child, for the purposes of obtaining information
3 as to the existence and content of a record of state or federal
4 convictions and state or federal arrests and also information as to
5 the existence and content of a record of state or federal arrests for
6 which the Department of Justice establishes that the person is
7 released on bail or on his or her own recognizance pending trial
8 or appeal: *the individual's full criminal record pursuant to Section*
9 *8712 of the Family Code.*

10 (c) Upon receipt of a *tribe's or tribal organization's* request for
11 federal summary criminal history information received pursuant
12 to this section, the Department of Justice shall ~~forward~~ *transmit*
13 the request to the Federal Bureau of Investigation. The Department
14 of Justice shall review the information returned from the Federal
15 Bureau of Investigation and compile and disseminate a response
16 to the requesting ~~tribal child welfare agency:~~ *tribe or tribal*
17 *organization.*

18 (d) The Department of Justice shall provide a state and federal
19 level response to a ~~tribal child welfare agency pursuant to~~
20 ~~subdivision (m) of Section 11105 of the Penal Code:~~ *tribe or tribal*
21 *organization pursuant to Section 8712 of the Family Code.*

22 (e) A ~~tribal agency~~ *tribe or tribal organization* shall request
23 from the Department of Justice subsequent notification service
24 pursuant to Section 11105.2 for persons described in subdivision
25 (b) of this section.

26 (f) The Department of Justice may charge a fee sufficient to
27 cover the reasonable and appropriate costs of processing the request
28 pursuant to this section.

29 (g) As used in this section a "~~tribal agency~~" *organization*" means
30 an entity designated by a federally recognized tribe as authorized
31 to approve a home consistent with *Section 1915 of the federal*
32 *Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.); 1915* for
33 the purpose of ~~placement of~~ *placing* an Indian child into foster or
34 adoptive care, ~~including care.~~ *This includes* the authority to conduct
35 a criminal or child abuse background check of, and grant
36 exemptions to, an individual who is a prospective foster or adoptive
37 parent, an adult who resides or is employed in the home of an
38 applicant for approval, any person who has a familial or intimate
39 relationship with any person living in the home of an applicant,

1 or an employee of a tribal child welfare agency who may have
2 contact with a child.

3 *SEC. 2. Section 10553.12 of the Welfare and Institutions Code*
4 *is amended to read:*

5 10553.12. (a) Notwithstanding any other law, a federally
6 recognized tribe is authorized, but not required, to *license or*
7 *approve* a home for the purpose of foster or adoptive placement
8 of an Indian child pursuant to the federal Indian Child Welfare
9 Act (25 U.S.C. Sec. 1915).

10 (b) An Indian child, as defined by subdivisions (a) and (b) of
11 Section 224, ~~that~~ *who* has been removed pursuant to Section 361,
12 from the custody of their parents or Indian custodian may be placed
13 in a tribally approved ~~home~~ *home, as defined at subdivision (r) of*
14 *Section 224.1*, pursuant to Section 1915 of the federal Indian Child
15 Welfare Act.

16 (c) To facilitate the availability of tribally approved homes that
17 have been fully approved in accord with federal law, including
18 completion of required background ~~checks, a tribal agency checks~~
19 *pursuant to Section 8712 of the Family Code, a tribe or tribal*
20 *organization* may request from the Department of Justice federal
21 and state summary criminal history information *and Child Abuse*
22 *Central Index Information pursuant to paragraph (8) of subdivision*
23 *(b) of Section 11170 of the Penal Code* regarding a prospective
24 foster parent or adoptive parent, an adult who resides or is
25 employed in the home of an applicant, a person who has a familial
26 or intimate relationship with a person living in the home of an
27 applicant, or an employee of the child welfare agency who may
28 have contact with ~~children, in accord with subdivision (m) of~~
29 ~~Section 11105 of the Penal Code and Child Abuse Central Index~~
30 ~~Information pursuant to paragraph (8) of subdivision (b) of Section~~
31 ~~11170 of the Penal Code.~~ *children.*

32 (d) As used in this section, a “tribal ~~agency~~” *organization*”
33 means an entity designated by a federally recognized tribe as
34 authorized to approve homes consistent with the federal Indian
35 Child Welfare Act for the purpose of ~~placement of Indian children,~~
36 *placing an Indian child* into foster or adoptive care, including the
37 authority to conduct criminal record and child abuse background
38 checks of, and grant exemptions to, individuals who are prospective
39 foster parents or adoptive parents, an adult who resides or is
40 employed in the home of an applicant for approval, a person who

1 has a familial or intimate relationship with a person living in the
 2 home of an applicant, or an employee of the tribal ~~agency~~
 3 *organization* who may have contact with children.

4 (e) A county social worker may place an Indian child in a tribally
 5 approved home without having to conduct a separate background
 6 check, upon certification by the ~~tribal agency~~ *tribe or tribal*
 7 *organization* of the following:

8 (1) The ~~tribal agency~~ *tribe or tribal organization* has completed
 9 a criminal record background check in accord with the standards
 10 set forth in Section 1522 of the Health and Safety Code, and a
 11 Child Abuse Central Index Check pursuant to Section 1522.1 of
 12 the Health and Safety Code, with respect to each of the individuals
 13 described in subdivision (c).

14 (2) The ~~tribal agency~~ *tribe or tribal organization* has agreed to
 15 report to a county child welfare agency responsible for a child
 16 placed in the tribally approved home, within 24 hours of
 17 notification to the ~~tribal agency~~ *tribe or tribal organization* by the
 18 Department of Justice, of a *any* subsequent state or federal arrest
 19 or disposition notification provided pursuant to Section 11105.2
 20 of the Penal Code involving an individual associated with the
 21 tribally approved home where an Indian child is placed.

22 (3) If the ~~tribal agency~~ *tribe or tribal organization* in its
 23 certification states that the individual was granted a criminal record
 24 exemption, the certification shall specify that the exemption was
 25 evaluated in accord with the standards and limitations set forth in
 26 paragraph~~(1)~~ (2) of subdivision (g) of Section 1522 of the Health
 27 and Safety Code and was not granted to an individual ineligible
 28 for an exemption under that provision.

29 (f) Tribal home approvals conducted in compliance with this
 30 section are not subject to resource family approval requirements.

31 **SECTION 1.**

32 *SEC. 3.* Section 16519.6 of the Welfare and Institutions Code
 33 is amended to read:

34 16519.6. (a) A hearing conducted pursuant to Section 16519.5
 35 shall be conducted in accordance with the requirements of this
 36 section and the written directives or regulations adopted pursuant
 37 to Section 16519.5.

38 (b) For a resource family hearing held at the department’s State
 39 Hearings Division, the procedures set forth in Chapter 7

1 (commencing with Section 10950) of Part 2 shall apply, except as
2 otherwise provided in this section.

3 (c) (1) For a resource family hearing held at the Office of
4 Administrative Hearings, the procedures set forth in the
5 Administrative Procedure Act (Chapter 4 (commencing with
6 Section 11370) of Part 1 of Division 3 of Title 2 of the Government
7 Code) shall apply, except as otherwise provided in this article.

8 (2) For purposes of the administrative action procedures set
9 forth in this article, “agency” means a county or the department
10 according to the authority to take action provided in subdivisions
11 (f) and (g) of Section 16519.5, except that “agency” shall mean
12 the department for purposes of a decision or a posthearing
13 procedure, as provided in Sections 11517 to 11522, inclusive, of
14 the Government Code.

15 (d) (1) Notwithstanding the time to appeal set forth in Section
16 10951 of this code and Section 1558 of the Health and Safety
17 Code, an applicant for approval or for a criminal record exemption
18 may file a written appeal within 90 days of service of a notice of
19 action, and a resource family, excluded individual, or individual
20 who is the subject of a criminal record exemption rescission may
21 file a written appeal within 25 days of service of a notice of action
22 or exclusion order.

23 (2) Pursuant to Section 1013 of the Code of Civil Procedure, if
24 the notice of action or exclusion order is served by mail, the time
25 to respond shall be extended five days.

26 (3) If different appeal timelines apply to a matter as a result of
27 multiple actions filed against a respondent, the following shall
28 apply:

29 (A) A county or the department, as applicable, shall accept an
30 appeal to one action as an appeal to all of the actions against the
31 same respondent, if requested to do so by the respondent.

32 (B) If an action for rescission of approval, criminal record
33 exemption rescission, or exclusion includes an action for
34 application denial, the applicable appeal timeline for a rescission
35 of approval, criminal record exemption rescission, or exclusion
36 specified in paragraph (1) shall also apply to the action for
37 application denial.

38 (4) This section does not impede or extend jurisdiction as set
39 forth in the Administrative Procedure Act (Chapter 4 (commencing

1 with Section 11370) of Part 1 of Division 3 of Title 2 of the
2 Government Code).

3 (e) (1) Notwithstanding Section 10951, and except as provided
4 in subdivision (m), a county's action shall be final, or for matters
5 set before the State Hearings Division, an appeal shall be subject
6 to dismissal, if the resource family, applicant, excluded individual,
7 or individual who is the subject of a criminal record exemption
8 denial or rescission does not file an appeal to the notice of action
9 or exclusion order within the prescribed time, withdraws the appeal,
10 or fails to appear at the hearing without good cause.

11 (2) Notwithstanding paragraph (1), a resource family, applicant,
12 excluded individual, or individual who is the subject of a criminal
13 record exemption denial or rescission shall be entitled to a hearing
14 pursuant to Section 16519.5 if they file the appeal no more than
15 30 calendar days after the due date for the appeal, as specified in
16 subdivision (d), and the person provides good cause for the late
17 filing of the appeal. Good cause shall be determined by the
18 department in an administrative review procedure set forth in the
19 written directives or regulations adopted pursuant to Section
20 16519.5. The department shall not grant a late appeal for good
21 cause if the appeal is filed more than 30 calendar days after the
22 due date for the appeal, as specified in subdivision (d).

23 (3) For purposes of this subdivision, the following definitions
24 apply:

25 (A) "Good cause" for the late filing of an appeal means a
26 substantial and compelling reason beyond the party's control,
27 considering the length of the delay, the diligence of the party filing
28 the appeal, and the potential prejudice to the other party.

29 (B) "Good cause" for failure to appear at the hearing shall be
30 as defined by the department in the written directives or regulations
31 adopted pursuant to Section 16519.5.

32 (C) The inability of a person to understand an adequate and
33 language-compliant notice, in and of itself, does not constitute
34 good cause.

35 (4) This section does not preclude the application of the
36 principles of equity jurisdiction as otherwise provided by law.

37 (f) Except as provided in subdivisions (g) and (h), and
38 notwithstanding Section 10952, a hearing under this section,
39 notwithstanding any time waiver, shall be held within 90 days
40 following the receipt of a timely appeal for matters to be set before

1 the State Hearings Division or within 90 days following the receipt
2 of a timely notice of defense for matters to be set before the Office
3 of Administrative Hearings, unless a continuance or postponement
4 of the hearing is granted for good cause.

5 (g) (1) The department may exclude a resource family parent,
6 applicant, or other individual from presence in any resource family
7 home, from employment in, presence in, and contact with clients
8 - of, any facility licensed by the department or certified or approved
9 by a licensed foster family agency, and from holding the position
10 of member of the board of directors, executive director, or officer
11 of the licensee of any facility licensed by the department, for any
12 of the reasons set forth in Section 16519.61.

13 (2) The department may issue an exclusion order requiring the
14 immediate removal of an individual if, in the opinion of the
15 department, the action is necessary to protect a child from physical
16 or mental abuse, abandonment, or any other substantial threat to
17 the child's health or safety. If the department has issued an
18 immediate exclusion order, the timelines for the service of an
19 accusation, conducting a hearing, and for a final determination set
20 forth in Section 1558 of the Health and Safety Code shall apply,
21 unless a continuance of the hearing is granted for good cause.

22 (3) A resource family's failure to comply with the department's
23 exclusion order after being notified of the order shall be grounds
24 for taking action against the resource family's approval pursuant
25 to Section 16519.61.

26 (4) An exclusion order that was effective prior to the
27 implementation of the resource family approval program and
28 conversion of licensed foster family homes and certified family
29 homes to resource families shall be deemed to exclude the
30 individual from presence in any resource family home.

31 (5) (A) An exclusion shall be for the remainder of the excluded
32 person's life, unless otherwise ordered by the department, or as
33 prescribed in Section 1558.1 of the Health and Safety Code.

34 (B) Pursuant to Section 11522 of the Government Code, the
35 excluded individual may petition for reinstatement to the
36 department after one year has elapsed from the effective date of
37 an exclusion order that was not appealed or the effective date of
38 a decision and order by the department upholding an exclusion
39 order. The department shall provide the excluded person a copy

1 of Section 11522 of the Government Code with the exclusion order
2 and decision and order.

3 (C) A temporary exclusion of an individual following a county's
4 denial of an application for resource family approval, rescission
5 of approval, or denial or rescission of a criminal record exemption,
6 shall only be imposed as set forth in the written directives or
7 regulations adopted by the department pursuant to Section 16519.5.

8 (6) For purposes of this subdivision, a "facility licensed by the
9 department" means a facility licensed pursuant to Chapter 3
10 (commencing with Section 1500) of, Chapter 3.01 (commencing
11 with Section 1568.01) of, Chapter 3.2 (commencing with Section
12 1569) of, Chapter 3.3 (commencing with Section 1570) of, Chapter
13 3.4 (commencing with Section 1596.70) of, Chapter 3.5
14 (commencing with Section 1596.90) of, or Chapter 3.6
15 (commencing with Section 1597.30) of, Division 2 of the Health
16 and Safety Code.

17 (h) If a county or the department has issued a temporary
18 suspension order, the hearing shall be held within 30 days
19 following the receipt of a timely appeal for matters to be set before
20 the State Hearings Division, or within 30 days following the receipt
21 of a timely notice of defense for matters to be set before the Office
22 of Administrative Hearings. The temporary suspension order shall
23 remain in effect until the time the hearing is completed and the
24 department has made a final determination on the merits. However,
25 the temporary suspension order shall be deemed vacated if the
26 department fails to make a final determination on the merits within
27 30 days after receipt of the proposed decision by the county or
28 department.

29 (i) A county and the department may coordinate the filing of
30 actions, file consolidated pleadings, or file a motion to consolidate
31 multiple actions if a matter involves both a county and department
32 action.

33 (j) A resource family, applicant, excluded individual, or
34 individual who is the subject of a criminal record exemption denial
35 or rescission who files an appeal to a notice of action or exclusion
36 order pursuant to this section shall, as part of the appeal, provide
37 their current mailing address. The resource family, applicant, or
38 individual who is the subject of a criminal record exemption denial
39 or rescission shall subsequently notify the county, and the excluded
40 individual shall notify the department, in writing of any change in

1 mailing address, until the hearing process has been completed or
2 terminated.

3 (k) Service by mail of a notice or other writing on a resource
4 family, applicant, excluded individual, or individual who is the
5 subject of a criminal record exemption denial or rescission in a
6 procedure pursuant to this section is effective if served to the last
7 mailing address on file with the county or department. Service of
8 a notice of action shall be by personal service or by first-class mail,
9 and service of an exclusion order shall be by personal service or
10 registered mail. If the last day for performance of any required
11 action falls on a holiday, then the period shall be extended to the
12 next day which is not a holiday.

13 (l) In all proceedings conducted in accordance with this section,
14 the burden of proof on the department or county shall be by a
15 preponderance of the evidence.

16 (m) (1) A county or the department may institute or continue
17 an administrative proceeding against a resource family, applicant,
18 or individual who is the subject of a criminal record exemption
19 denial or rescission upon any ground provided by this section or
20 Section 16519.61, enter an order denying an application or
21 rescinding the approval of a resource family, exclude an individual,
22 issue a temporary suspension order, or otherwise take disciplinary
23 action against a resource family, applicant, or individual who is
24 the subject of a criminal record exemption denial or rescission
25 notwithstanding any resignation, withdrawal, forfeiture, surrender
26 of approval, or denial or rescission of the approval by a foster
27 family agency.

28 (2) The department may institute or continue an administrative
29 proceeding against an excluded individual upon any ground
30 provided by this section or Section 16519.61, enter an order to
31 exclude an individual, or otherwise take disciplinary action against
32 an excluded individual, notwithstanding any resignation,
33 withdrawal, forfeiture, surrender of approval, or denial or rescission
34 of the approval by a foster family agency.

35 (n) (1) Notwithstanding Sections 11425.10 and 11425.20 of
36 the Government Code, a proceeding conducted pursuant to this
37 section shall be confidential and not open to the public in order to
38 preserve the confidential information of a child or resource family
39 consistent with the confidentiality requirements in Sections 827,
40 10850, and 16519.55 of this code, Section 1536 of the Health and

1 Safety Code, and Section 11167.5 of the Penal Code.
 2 Notwithstanding this requirement, an administrative law judge
 3 may admit persons deemed to have a direct and legitimate interest
 4 in the particular case or the work of the court on a case-by-case
 5 basis and with any admonishments, limitations, and protective
 6 orders as may be necessary to preserve the confidential nature of
 7 the proceedings.

8 (2) Except as otherwise required by law, in any writ of mandate
 9 proceeding related to an issue arising out of this article, the name,
 10 identifying information, or confidential information of a child as
 11 described in Sections 827, 10850, and 16519.55, and Section
 12 11167.5 of the Penal Code, shall not be disclosed in a public
 13 document and a protective order shall be issued by the court in
 14 order to protect the confidential information of a child.

15 ~~SEC. 2.~~

16 *SEC. 4.* To the extent that this act has an overall effect of
 17 increasing the costs already borne by a local agency for programs
 18 or levels of service mandated by the 2011 Realignment Legislation
 19 within the meaning of Section 36 of Article XIII of the California
 20 Constitution, it shall apply to local agencies only to the extent that
 21 the state provides annual funding for the cost increase. Any new
 22 program or higher level of service provided by a local agency
 23 pursuant to this act above the level for which funding has been
 24 provided shall not require a subvention of funds by the state or
 25 otherwise be subject to Section 6 of Article XIII B of the California
 26 Constitution.