

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Alex Lee, Chair

AB 2544 (Low) – As Amended March 11, 2024

**SUBJECT:** Background checks

**SUMMARY:** Permits a licensee of a community care facility to approve an individual to care for children prior to the completion of the check of other state’s child abuse and neglect registry, provided that specified conditions are met. Specifically, **this bill:**

- 1) Permits a licensee of a community care facility to approve an individual to care for children prior to the completion of the check of other state’s child abuse and neglect registry, provided that the following conditions are met:
  - a) The facility has submitted a request for the out-of-state abuse and neglect registry check to the Care Provider Management Bureau;
  - b) The applicant has been cleared for all other aspects of the background check, including the Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), and the Child Abuse Central Index (CACI); and,
  - c) Prohibits the applicant from having unsupervised contact with residents or clients until the completion of the abuse and neglect registry check, and requires the licensee to take reasonable steps to ensure the safety and well-being of residents during this period. The applicant may be employed to work in the facility under supervision until a complete caregiver background check is obtained.
- 2) Requires, if the out-of-state abuse and neglect registry check reveals information that would disqualify the applicant from approval, the licensee to remove the applicant from the community care facility immediately upon receipt of the information and notify the California Department of Social Services (CDSS) of the removal within three business days.

**EXISTING LAW:**

- 1) Establishes the Community Care Facilities Act, which allows for the licensure and oversight of out-of-home placements for abused and neglected children by CDSS. (Health and Safety Code [HSC] § 1500 *et seq.*)
- 2) Establishes the Community Care Licensing Division (CCLD) within CDSS and requires CDSS to license group care facilities, private foster family agencies, and foster family homes in order to place children who are in the child welfare system. Further requires, prior to licensure, a foster home provider to undergo a specified criminal background check. (HSC §§ 1502; 1522)
- 3) Defines “community care facility” as any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, individuals with disabilities or mental impairments and abused or neglected children, and

includes: residential facilities, adult day programs, foster family agencies, group homes, and children's crisis residential programs, among others. (HSC § 1502 *et seq.*)

- 4) Requires CDSS to obtain a full criminal record, if any, for certain individuals, including adults responsible for administration or direct supervision of staff; any person, other than a client, residing in the facility; any person who provides client assistance in dressing, grooming or bathing; and any staff person, volunteer, or employee who has contact with the clients, among others, for purposes of criminal record clearance. (HSC § 1569.17 (b))
- 5) Permits CDSS to allow an individual to transfer a current criminal record clearance from one facility to another if the clearance has been processed and is being transferred to another facility licensed by a state licensing district office. Further, requires the request to be submitted to CDSS in writing, to include a copy of the person's driver's license, or other form of valid identification, and requires CDSS to verify whether the individual has a clearance that can be transferred. (HSC § 1569.17 (g)(1))
- 6) Requires all personnel records be maintained at the facility, and further, allows licensees to retain such records in a central administrative location provided that they are readily available to the licensing agency at the facility. (22 California Code of Regulations § 87412 (g))

**FISCAL EFFECT:** Unknown, this bill has not been analyzed by a fiscal committee.

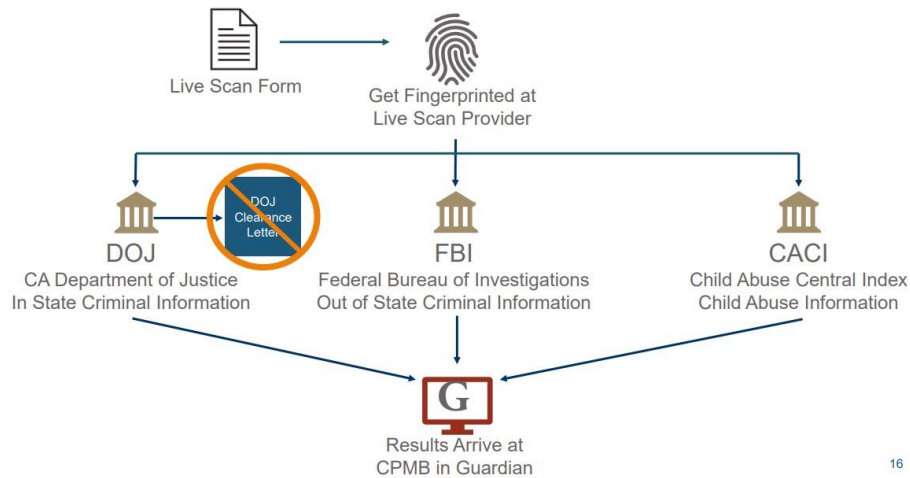
**COMMENTS:**

**Background:** *Background Check Process for Applicants.* As part of the background process, CDSS is responsible for obtaining state and federal criminal history information on any individual applying for a license, certification, registration, or approval; or seeking to work or be present in a licensed facility for adults. CDSS is responsible for processing and approving individuals to work in and around these children. For the children's residential program, there are two forms separated by placement. One for Resource Family Approval (RFA), and the other for foster placements which include group homes, short-term residential therapeutic programs (STRTPs), temporary housing placements, and temporary shelter care facilities.

This bill applies to foster placements, which are also subjected to out of state child abuse checks (OSCA). Applicants subject to these checks are not authorized to work or be present in a licensed facility or approved home until the out-of-state child abuse and neglect registry check has been completed.

An applicant or agency typically starts in the Guardian system, which is the online application program CDSS uses for all background checks, including adult programs. After submitting an application, an applicant then gets Live Scan fingerprinted and the information is sent back to the Guardian system. [Note: an applicant can get a Live Scan prior to submitting an application via Guardian.]

The following is a chart of the process for fingerprints to arrive at CDSS:



After the fingerprints are received in the Guardian system and, if flagged, CDSS then does a registry research check which can include the Administrative Actions Records System and CACI. Administrative Actions Records System is a database housing information on negative legal actions, and CACI is a system with child abuse information.

Once those are finished, CDSS checks if there is a record of arrests and prosecutions (RAP) sheet. If a RAP sheet exists, this means that the individual has a criminal history of some kind, based on the results from the DOJ and/or FBI. CDSS examines criminal history that begins when an applicant turns 18 years of age, regardless if the arrest does not end in a conviction or if the conviction is later dismissed and/or expunged.

There are three possible next steps if an RAP sheet exists.

- 1) If it is a non-exemptible conviction, the application is denied. There is a list of 60 non-exemptible offenses which include, but are not limited to, murder, rape, torture, kidnapping, and robbery;
- 2) If the crimes are eligible for exemption under current law, CDSS will send an exemption notification letter to the applicant or licensee and to the individual. Individuals awaiting an exemption may not be present in a facility until an exemption is granted. CDSS then makes a determination by reviewing the case and other required documentation, which could result in approval, conditional approval, or denial. When considering an exemption for individuals who have committed crimes that are exemptible, CDSS is required to consider a number of factors, including, but not limited to: the nature of the crime, including whether it involved violence; the period of time since the crime was committed and number of offenses; the circumstances surrounding the crime; activities since conviction, such as employment or participation in therapy or education; pardons granted; character references; a certificate of rehabilitation from a superior court; and, evidence of honesty and truthfulness. CDSS is also required to consider the individual's age at the time the crime was committed. CDSS has the authority to grant a criminal record exemption that places conditions on the individual's continued licensure and employment or presence in a licensed facility; or,

- 3) If the RAP sheet is flagged as referral arrest, which means the individual has an arrest on their record that is on the referable arrest list, then CDSS will do an investigation, but cannot inform the agency for which the applicant is applying to work.

*Out of State Child Abuse Checks (OSCA)* is an additional requirement for resource parents, adults living in a resource family home, and employees of children's residential agencies that have lived out-of-state in the past five years in compliance with the Family First Prevention Services Act. This check is a one-time check of an out of state agency's child abuse/neglect registry. If an applicant moves out-of-state for any period of time, the foster family agency or children's residential agency will need to resubmit the applicable forms to complete a new OSCA check.

*Background Check Processing Timelines.* Background checks are important to ensure vulnerable populations are kept safe and not put into unnecessary danger. However, in recent years, advocates have reported long wait times resulting in staffing delays, which can also impact care to individuals.

*This bill* is attempting to address long wait times for out-of-state checks after the other elements of clearance is completed by allowing someone to continue working while waiting for out-of-state clearance.

**Author's Statement:** According to the Author, "California is facing a crisis for foster youth finding appropriate placements that provide the therapeutic supports needed and the programs that serve these foster youth are limited in who they can recruit for their programs due to, while well intentioned, significant bureaucratic barriers for any prospective employee that has lived out of state in the last five years. This applies to all staff, including clinical staff that may have gone out of state for their masters' program. The out of state checks required may need to be mailed to other states, with wet signatures and checks and can take upwards of 6-9 months to come back, all while the person has to wait to work with children.

"[This bill] addresses workforce issues by allows for out-of-state prospective employees to begin employment, training on the job, and continues to protect children safety by not allowing any unsupervised contact with children while the out-of-state child abuse check is pending and that the clearances from the Department of Justice, Federal Bureau of Investigation, and Child Abuse Central Index through the Department of Social Services' Guardian system must still be completed prior to hire. This bill balances protections for children while allowing prospective employees moving from out of state to start working and provide life saving care"

**Equity Implications:** The provisions of this bill seek to address workforce shortages for programs that serve foster youth, who are disproportionately individuals of color, low income, lesbian, gay, bisexual, transgender, queer and/or questioning, and other non-cishet gender identities and sexualities, have poor school outcomes, and higher behavioral health needs. This bill will address a barrier in assisting to hire the staff that work directly with these youth.

**Double referral:** Should this bill pass out of the committee, it will be referred to the Assembly Committee on Public Safety.

**RELATED AND PRIOR LEGISLATION:**

**AB 1720 (Holden), Chapter 581, Statutes Of 2022**, authorized CDSS to grant a simplified criminal record exemption to an applicant seeking a license or position within various community care facilities, as specified, and removed the requirement for those applicants to sign a declaration under penalty of perjury before the receipt of Live Scan results regarding prior criminal convictions.

**SB 354 (Skinner), Chapter 687, Statutes of 2021**, adopted changes to the criminal background check process during the RFA process for relatives of children placed in the child welfare system; permitted the court to authorize placement of children with relatives in certain circumstances, regardless of the status of any criminal exemption or RFA; and required CDSS to submit a report to the Legislature by January 1, 2024 related to specified criminal record exemptions.

**AB 447 (Patterson) of 2019**, would have created a process by which licensees of community care facilities, residential care facilities for persons with chronic life-threatening illness, residential care facilities for the elderly, and child daycare facilities may transfer the current criminal record clearance of an individual associated with the facility, with the exception of individuals associated with a certified family home or resource family of a foster family agency, to multiple facilities of the same facility type operated by the same licensee. *AB 447 was held on the Senate Appropriations Committee suspense file.*

**AB 1608 (Holden) of 2019**, would have prohibited CDSS from requiring certain individuals subject to the criminal background check process to self-disclose their criminal history information; would have required CDSS to annually post certain data related to criminal record clearance and exemption approvals and denials on its website, and, would have prohibited certain conduct from serving as the basis of a suspension or revocation of a license to operate a community care facility, or as the basis to prohibit an individual from serving in certain administrative capacities over a community care facility, unless certain circumstances exist. *AB 1608 was not set for hearing by the Senate Committee on Human Services.*

**AB 819 (Stone), Chapter 777, Statutes of 2019**, adopted changes to further facilitate the implementation of Continuum of Care Reform, specifically as it relates to flexibility for resource families, exclusions from resource family homes, financial resources available to tribally approved homes, the provision of intensive services foster care, and the ability of group home staff to administer emergency injections, among others.

**SB 213 (Mitchell), Chapter 733, Statutes of 2017**, streamlined the background check process for prospective 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.

**REGISTERED SUPPORT / OPPOSITION:****Support**

California Alliance of Child and Family Services (Sponsor)  
A Greater Hope  
Aspiranet

Bill Wilson Center  
Casa de Amparo  
Children's Bureau of Southern California  
Haven of Hope  
Haynes Family of Programs, Inc.  
Koinonia Family Services  
Newport Healthcare  
Progress Ranch Treatment Services  
Rancho San Antonio Boys Home, Inc.  
Redwood Community Services  
St Anne's Family Services  
Sycamores  
TLC Child and Family Services  
Walden Family Services

**Opposition**

None on file.

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