

Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

AB 1608 (Holden) – As Amended April 22, 2019

**SUBJECT:** Community care facilities: criminal background checks

**SUMMARY:** Prohibits the California Department of Social Services (CDSS) from requiring an applicant for a license to operate a community care facility to self-disclose their criminal history information, requires CDSS to annually post on its internet website certain data related to criminal record clearance and exemption approvals and denials, requires CDSS to create a process to grant simplified criminal record exemptions to applicants for a license or special permit to operate or manage a community care facility, and instructs CDSS to consider granting a simplified criminal record exemption to individuals who meet certain criteria. Specifically, **this bill:**

- 1) Prohibits CDSS from requiring an applicant for a license to operate a community care facility to self-disclose their criminal history information.
- 2) Instructs CDSS to post on its internet website and make publicly available the following information for each year:
  - a) The total number of applicants who applied for initial certification;
  - b) The total number of applicants with a conviction for a related crime who applied for certification;
  - c) The number of applicants who were denied, approved, and approved without restrictions;
  - d) The number of applicants with a conviction for a related crime who were denied certification, granted a criminal record exemption, and granted a criminal record exemption with restrictions;
  - e) The stated reason(s) for denying a criminal record exemption, or granting an exemption with restrictions, and whether those reasons are a result of the type of crime, the rehabilitation evaluation, or the client or facility type;
  - f) The restrictions imposed on applicants who were granted criminal record exemptions and the duration of those restrictions, specifically including whether the reason or duration is a result of the type of crime, the rehabilitation evaluation, or the client or facility type;
  - g) Demographic data for all applicants, sorted by applicants who were denied, given a clearance, granted a criminal record exemption, or granted a criminal record exemption with restrictions, as specified; and,
  - h) The county of residence of applicants who were denied, given a clearance, granted a criminal record exemption; or granted a criminal record exemption with restrictions.
- 3) Instructs CDSS to publish the data required by provisions of this bill in aggregate and without personally identifying information.

- 4) Requires CDSS to collect certain information about individuals subject to the criminal background check process, as defined in current law, including:
  - a) The number of criminal record exemption requests received by the department, and how many requests were approved or denied;
  - b) The crimes for which exemptions were approved or denied;
  - c) The demographic data of individuals who received or did not receive exemptions, as specified;
  - d) The number of individuals who appealed an exemption decision and the outcomes of those appeals; and,
  - e) The average length of time elapsed prior to a decision issued on an appeal or initial exemption.
- 5) Requires CDSS to examine and review the collected data to determine whether demographic disparities exist within the existing criminal background check process.
- 6) Instructs CDSS to, no later than January 1, 2022, issue a report with its findings, as specified.
- 7) Requires CDSS to establish a process to grant a simplified criminal record exemption to an applicant for a license or special permit to operate or manage a community care facility and for individuals subject to the criminal record clearance process, as specified in current law.
- 8) Requires CDSS to consider granting simplified criminal record exemptions only to individuals who meet all of the following criteria:
  - a) The individual does not have a demonstrated pattern of criminal activity;
  - b) The individual has no more than one conviction;
  - c) The conviction is a nonviolent misdemeanor and did not pose a risk of physical harm to an individual; and,
  - d) At least five consecutive years have passed since the completion of the most recent period of incarceration or supervised probation.
- 9) Permits CDSS to require, at its discretion, an individual who is otherwise eligible for a simplified exemption pursuant to the provisions of this bill, to complete the standard exemption process if CDSS determines that completing the standard exemption process action will protect the health and safety of children.
- 10) Makes technical changes.

**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] Section 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 criminal background check, as specified. (HSC 1502 and 1522)
- 3) Defines a “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, the physically handicapped, mentally impaired, incompetent persons, 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) Defines “residential care facility” as a residential care facility for persons with chronic, life-threatening illness who are 18 years of age or older or are emancipated minors. (HSC 1568.01(j))
- 5) Defines “terminal illness” as a medical condition resulting from a prognosis of a life expectancy of one year or less, if the disease follows its normal course. (HSC 1568.01(l))
- 6) Defines “residential care facility for the elderly” (RCFE) as a housing arrangement chosen voluntarily by persons 60 years of age or over, or their authorized representative, where varying levels and intensities of care and supervision, protective supervision, or personal care are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility. (HSC 1569.2(o)(1))
- 7) Defines “child day care facility” as a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis, and may include day care centers, employer-sponsored child care centers, and family day care homes. (HSC 1596.750)
- 8) Defines “home care organization” to mean an adult individual or entity that arranges for home care services by an affiliated home care aide to a client and is licensed, as specified. (HSC 1796.12(j))
- 9) Defines “registered home care aide” as an affiliated home care aide or independent home care aide, 18 years of age or older, who is listed on the home care aide registry. (HSC 1796.12(o))
- 10) Prohibits a criminal records exemption from being granted for an applicant to work, reside, or volunteer in certain facilities (including residential care facilities for the elderly, residential care facilities for the chronically ill, child day care facilities, and community care facilities) if the applicant has a conviction for certain offenses, as specified, including an offense specified in Penal Code [PEN] Section 290(c), which pertains to crimes for which registration as a sex offender is required. (HSC 1522(g)(1)(A), HSC 1569.17(f), HSC 1568.09(f), HSC 1596.871)

- 11) Requires individuals in community care facilities, including adults responsible for administration or direct supervision of staff, any person, other than a client, residing in the facility, and any staff person, volunteer, or employee who has contact with clients, among others, to obtain either a criminal record clearance or a criminal record exemption from CDSS before his or her initial presence in a community care facility or certified family home. (HSC 1522(a))
- 12) Allows CDSS to issue a license to certain individuals who meet all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal offender record information search response, if the individual has signed and submitted a statement that they have never been convicted of a crime in the United States, other than a traffic infraction, as specified. Further, allows CDSS to revoke a license if it is determined that the licensee has a criminal record. (HSC 1522(a)(1)(E))
- 13) Requires CDSS to deny the applications of certain applicants if the applicant has been convicted of a crime other than a minor traffic violation, unless the department has granted an exemption pursuant to the exemption requirements specified in HSC 1522(g), if the individual is awaiting trial for a crime other than a minor traffic violation, or, it is discovered by CDSS after licensure that an individual has been convicted of a crime other than a minor traffic violation. (HSC 1522(a)(4))
- 14) Allows the California Department of Justice (DOJ) to provide subsequent state or federal arrest or disposition notification to any entity authorized by state or federal law to receive state or federal summary criminal history information to assist in fulfilling employment, licensing, certification duties, or the duties of approving relative caregivers, nonrelative extended family members, and resource families upon the arrest or disposition of any person whose fingerprints are maintained on file at the DOJ or the Federal Bureau of Investigation as the result of an application for licensing, employment, certification, or approval. (PEN 11105.2(a))
- 15) Requires DOJ to, within 14 calendar days, notify CDSS of the criminal record information, and, if no criminal information has been recorded, provide a statement of that fact. (HSC 1522(c)(2))

**FISCAL EFFECT:** Unknown

**COMMENTS:**

***Community Care Licensing Division (CCLD):*** Within CDSS is CCLD, which is responsible for licensing and investigating complaints against facilities that fall within its jurisdiction, such as RCFEs, child care facilities, and out-of-home placements for foster youth, among others. Typically, these facilities provide non-medical care and supervision for adults and youth in need by providing adult care services, early childhood education (child care), foster care and shelter services for youth, and residential care for seniors or individuals with developmental disabilities. CCLD is also responsible for ensuring these facilities comply with all applicable laws and regulations, including criminal background checks, as well as overseeing any necessary corrective actions in the event of noncompliance.

***Criminal background checks:*** Applicants, 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, if applicable. The background check requires these individuals to submit fingerprints which are used by DOJ to search for any criminal record history. For individuals without a criminal history, DOJ forwards a clearance notice to the applicant or licensee, and to the Caregiver Background Check Bureau (CBCB) of CCLD. In the event that the individual does have a criminal history, DOJ sends a record transcript to CBCB, detailing the person's arrests and convictions. If the crimes meet the criteria necessary to qualify for an exemption, pursuant to current law, CBCB sends an exemption notification letter to the applicant or licensee and to the individual. Individuals who are awaiting an exemption may not be present in a facility until an exemption is granted by CBCB. An exemption is required when an individual has been convicted of any crime other than a minor traffic violation, and current law prohibits CDSS from granting exemptions to individuals who commit certain crimes (referred to as non-exemptible crimes), including convictions for murder, kidnapping, possession of child pornography, sexual exploitation of a child, elder or dependent abuse, and arson, among others. Currently, and pursuant to CDSS Evaluator Manual Section 7-1700, CDSS uses the following processes when determine whether to grant a criminal record exemption:

Simplified exemptions: Are used for individuals who are convicted of one nonviolent misdemeanor that is over five years old, and consists of an examination of an applicant's records of arrests and prosecutions (RAP) sheet. In order to qualify for a simplified exemption, an individual: does not have a demonstrated pattern of criminal activity; has no more than one conviction; the conviction is a misdemeanor and is a crime that is nonviolent and does not pose a risk of harm to a subject; and, it has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation. Crimes that may qualify for a simplified exemption include petty theft, perjury, shoplifting, public intoxication, gambling, and unlawful assembly or picketing, among others.

Standard exemptions: Are used to evaluate all felony convictions and misdemeanors that do not qualify for a simplified exemption. To approve a standard exemption, CCLD must evaluate the possibility of potential risk or threat to clients in care; factors such as a lack of remorse, honesty, integrity, or education are not automatic grounds for denial if there is other substantial and convincing evidence to grant an exemption, although those factors may speak to a lack of rehabilitation in some cases.

Individual exemptions: Are used in the event that a licensee, upon receiving notice of an applicant's criminal history, chooses to terminate or not hire the applicant. In these cases, the applicant has the right to request an individual exemption on their own behalf, and an approved individual exemption is valid for two years without being associated to any particular facility.

Conditional exemptions: Are used when CDSS approves an individual but places a restriction or condition on a standard exemption, to limit client contact or restrict the applicant's role in some way, e.g. the applicant may not transport clients or may not dispense prescription medications to clients.

The provisions of this bill would codify current practice and regulations by requiring CDSS to grant simplified criminal record exemption to applicants who meet the necessary eligibility criteria enumerated in the departmental Evaluator Manual.

***California State Auditor report:*** Audit Report 2016-126, released in March 2017, examined the timeliness and quality of CDSS background check procedures for individuals who have contact with clients in community care facilities. The report made a number of findings, including:

DOJ does not send CDSS certain necessary information: State law does not explicitly require DOJ to send information related to sentencing and in 2016, DOJ stopped providing that information to CDSS. Pursuant to current law, DOJ is required to provide certain information to CDSS, including every criminal conviction of an individual, every arrest for which an individual is awaiting trial, and every arrest for certain crimes, including murder, elder abuse, and assault, and sex offender status, but not information related to any arrest that was later determined to be a detention only or that resulted in the successful completion of a diversion program or exoneration. CDSS, therefore, issues clearance and exemption decisions based upon incomplete criminal record histories due to DOJ lacking the explicit authority to provide sentencing information; still, state regulations require CDSS to consider whether an applicant is on probation or parole, as well as the length of time that has elapsed since the end of parole, probation, or incarceration.

CDSS does not always obtain or review all pertinent information: The report also found that CBCB clears individuals to be present in licensed facilities without first reviewing convictions for infractions, which are relatively minor crimes and often punishable by a fine imposed by courts; infractions include certain instances of theft, leaving a child under six years old in a vehicle without supervision, and selling liquor to a minor. While current law requires a criminal record exemption be obtained for convictions of any crimes with the exception of a nonminor traffic violation, background check procedures dictate CDSS staff to review only convictions for misdemeanors or felonies, and not convictions for infractions, as CDSS interprets “minor traffic violation” as inclusive of all infractions, be they traffic-related or otherwise. Current law also allows individuals to be present in a licensed facility based on their in-state criminal history received by DOJ, but prior to the receipt of the federal RAP sheet if the individual has submitted a self-disclosure form attesting that they have never been convicted of a crime in the United States (other than a traffic violation). The audit report found that CDSS, contrary to state law, allowed individuals who did not submit a self-disclosure form to be present in licensed facilities.

Delays at DOJ and CDSS cause further delays in the issuance of exemption decisions: While DOJ is currently required to provide CDSS with criminal record histories within 14 days of receiving a person’s fingerprints, the State Auditor found that, in some instances, the average amount of time it took DOJ to send information to CDSS was between 30 and 66 days after fingerprinting, which can further delay the date by which CDSS can initiate and complete background checks. It was also determined that the information contained in the DOJ materials affects the timeliness during which CDSS issues a decision on a criminal record exemption. During Fiscal Years 2013-14 and 2015-16, upon receipt of information from DOJ, CBCB took an average of 149 and 170 days – approximately five to six months – to decide whether to grant or deny a standard exemption. The exemption process took an average of about four months, as state regulations allow 45 days for an individual or facility to submit exemption request documents to CDSS.

Auditor’s recommendations: In response to these findings, the audit made a number of recommendations, including, but not limited to:

- Amend state law to clearly direct DOJ to transmit all convictions it receives;

- Require CDSS to change its practice of allowing individuals who have not submitted a self-disclosure form to CDSS to have access to licensed facilities, which is contrary to current state law;
- Establish timeframes by which CDSS must notify individuals and facilities that criminal history exemptions are required, and for evaluating and issuing exemption decisions;
- Require DOJ to obtain and transmit subsequent federal RAP sheets and to report to the Legislature periodically about its implementation efforts, among others; and,
- Expand the list of non-exemptible crimes to include eight crimes that are similar to crimes for which an exemption may not be granted, such as certain instances of spousal rape, pandering (not of a minor), pimping (not of a minor), and identity theft.

***Need for this bill:*** The provisions of this bill seek to strike a balance between providing for the health and safety of residents in community care facilities, and reducing unnecessary barriers to employment for individuals with a criminal history. Specifically, the bill prohibits CDSS from requiring an applicant for a license to operate a community care facility from self-disclosing their criminal history information. The bill would also require CDSS to post certain data on its internet website for purposes of determining whether racial, ethnic, gender, age, or geographic disparities exist within the current criminal records exemption process, and further, would require CDSS to collect, examine, and review the data to determine whether demographic disparities exist, and issue a report with its findings. Finally, the bill would require CDSS to establish a process to grant a simplified criminal record exemption to certain eligible individuals, and would require CDSS to consider granting simplified criminal record exemptions to individuals who meet certain criteria related to criminal history.

According to the author, “[This bill] creates a fair chance for people with arrest and conviction records to access caregiving and other jobs governed by CDSS. The bill codifies the streamlined process used by CDSS to evaluate potential caregivers and others with a record of conviction or arrest to ensure that applications are not being needlessly delayed. The bill also asks CDSS to evaluate its application and background check process to ensure that clearances are being approved or denied in a timely manner and that women and people of color are not being disproportionately affected by those policies. Protecting the health and safety of these vulnerable populations is critical, however, we must ensure that the workers serving this population are not delayed by inefficiency. This bill brings us closer to finding that balance.”

***Staff comments:*** The provisions of this bill seek to strike a balance between protecting the health and safety of individuals placed in community care facilities, and ensuring that the current criminal background check process does not contain unnecessary barriers to individuals seeking employment opportunities in these facilities. One way the bill does this is by prohibiting CDSS from requiring an applicant for a license to operate a community care facility to self-disclose criminal history information; however, pursuant to current law, the bill would still require other individuals subject to the criminal background check process to self-disclose criminal history. It is unclear whether there is merit to prohibiting one population and not another from a requirement to self-disclose criminal history information, or whether applying this prohibition to a relatively small population relative to all individuals subject to background checks would accomplish the author’s goal of reducing unnecessary barriers to employment opportunities in community care facilities.

More broadly, the Legislature has seen an increase in legislation in recent years related to health and safety in community care facilities, specifically as it pertains to the criminal background check process. Some proposals have been introduced in response to the State Auditor's report and seek to increase the stringency of the existing criminal background check process, while others, including this bill, seek to reform the existing process to allow for greater flexibility in determining whether to issue exemptions to individuals who have committed a crime but have been rehabilitated. It is the role of the Legislature to protect the health and safety of individuals placed in community care facilities. However, it is also important to ensure that the criminal background check process is timely, efficient, and does not unduly pose barriers to individuals who wish to provide the much-needed care to residents placed in these facilities. *Should this bill move forward, the author may wish to consider whether a comprehensive assessment of the existing background check process, including examining the role of self-disclosure of criminal history information, is necessary to determine if the existing process is effective, timely, efficient, and provides for the needs of residents placed in facilities, without also establishing unnecessary barriers to individuals who wish to provide care to residents.*

*Recommended committee amendments:* In order to ensure clarity and consistency, *committee staff recommends the following technical amendments:*

*1) Beginning on line 19 on page 22 of the bill, make the following amendments:*

- 19 (1) *The total number of applicants who applied for initial*  
 20 *certification.*
- 21 ~~(2) *The total number of applicants with a conviction for a related*~~  
 22 ~~*crime who applied for certification.*~~
- 23 (3) *The number of applicants who were denied, the number of*  
 24 *applicants approved, and the number of applicants approved with*  
 25 *restrictions.*
- 26 ~~(4) *The number of applicants with a conviction for a related*~~  
 27 ~~*crime who were denied certification, the number of applicants*~~  
 28 ~~*with a conviction for a related crime who were granted a criminal*~~  
 29 ~~*record exemption, and the number of applicants with a conviction*~~  
 30 ~~*for a related crime who were granted a criminal record exemption*~~  
 31 ~~*with restrictions.*~~

*2) Beginning on line 3 on page 23 of the bill, make the following amendments:*

- 3 (7) *Race, ethnicity, gender, and age demographic data for all*  
 4 *applicants, sorted by applicants who were denied, given a*  
 5 *clearance, granted a criminal record exemption, or granted ~~and a~~*  
 6 *criminal record exemption with restrictions.*



3) *Beginning on line 26 on page 23 of the bill, make the following amendments:*

26 (7) *The average length of time that elapsed prior to a decision*  
 27 *being issued on ~~and~~ an appeal.*

4) *Beginning on line 16 on page 24 of the bill, make the following amendments:*

16 (c) *The department may require, in its discretion, an individual*  
 17 *who is otherwise eligible for a simplified exemption pursuant to*  
 18 *this section to complete the standard exemption process if the*  
 19 *department determined completing the standard exemption process*  
 20 *~~action~~ will protect the health and safety of children and adults placed in community care*  
*facilities.*

**RELATED AND PRIOR LEGISLATION:**

**AB 367 (Flora) of 2019** includes certain instances of spousal rape, pandering (not of a minor), pimping (not of a minor), and identity theft among the crimes for which a criminal background check exemption may not be granted. AB 367 is scheduled to be heard in the Assembly Human Services Committee on April 23, 2019.

**AB 447 (Patterson) of 2019** creates a process by which licenses of certain community care facilities can transfer current criminal record clearances of an individual associated with a facility to multiple facilities of the same facility type operated by the same licensee. AB 447 is scheduled to be heard in the Assembly Appropriations Committee on April 24, 2019.

**AB 1796 (Levine) of 2019** prohibits CDSS from granting a criminal record clearance or exemption until it receives a complete state and federal criminal record. AB 1796 is scheduled to be heard in the Assembly Human Services Committee on April 23, 2019.

**AB 1914 (Flora), Chapter 708, Statutes of 2018**, as introduced, would have expanded the list of non-exemptible crimes to include certain instance of spousal rape, pandering (not of a minor), pimping (not of a minor), and identity theft. AB 1914 was amended on June 25, 2018, to pertain to underground excavations and subsurface facilities.

**AB 3039 (Holden) of 2018** would have made numerous certain changes to the criminal background check process for certain community care facilities, home care aide registry applicants, and home care organizations. AB 3039 was held on the Assembly Appropriations Committee's suspense file.

**AB 484 (Cunningham), Chapter 526, Statutes of 2017**, made convictions for any crime listed in PEN 261, which pertains to crimes related to rape, abduction, carnal abuse of children, and seduction, a requirement for registering on the sex offender registry.

**SB 384 (Wiener), Chapter 541, Statutes of 2017**, created a tiered registry for sex offenses such that people are required to register for 10 years, 20 years, or lifetime depending on the offense for which the individual was convicted.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Alliance for Boys and Men of Color (Sponsor)  
East Bay Community Law Center (Sponsor)  
Legal Services for Prisoners with Children (Sponsor)  
Root & Rebound (Sponsor)  
A New Way of Live Reentry Project  
Anti-Recidivism Coalition  
National Association of Social Workers, California Chapter  
REDF

**Opposition**

None on file

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