

Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

AB 1796 (Levine) – As Amended April 11, 2019

SUBJECT: Community care facilities: criminal background checks

SUMMARY: Repeals the ability of the California Department of Social Services (CDSS) to issue a license to operate or provide direct care services in a community care facility when an applicant meets all other conditions for licensure, except for receipt of pending Federal Bureau of Investigation (FBI) criminal offender record information, and the individual has signed and submitted a statement that they have never been convicted of a crime in the United States, and instead prohibits CDSS from granting a criminal record clearance or exemption until it receives an individual's complete state and federal criminal record. Specifically, **this bill:**

- 1) Deletes the ability of CDSS to issue a license to operate or provide direct care services in a community care facility to an applicant who, except for receipt of the FBI's criminal offender record information search response, meets all of the conditions for licensure and has signed and submitted a statement that they have never been convicted of a crime in the United States, other than a traffic violation, as defined in current law.
- 2) Deletes the ability of CDSS to revoke the license, or require a foster family agency to revoke the certificate of approval, if, after licensure or the issuance of a certificate of approval to a certified family home by a foster family agency, CDSS determines that an individual, as specified, has a criminal record.
- 3) Deletes the ability of CDSS to suspend a license or require a foster family agency to suspend a certificate of approval pending an administrative hearing, as defined in current law.
- 4) Prohibits CDSS from granting a criminal record clearance or from granting an exemption, as specified in current law, until it receives an individual's complete state and federal criminal history information from the Department of Justice.
- 5) 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) Requires CDSS to notify a licensee, upon service of an order of temporary license suspension, of the licensee's right to an interim hearing on the order. (HSC 1550.5(a)(1))
- 5) 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))
- 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) 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))
- 9) 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))
- 10) 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))
- 11) 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 crime 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)

- 12) Allows the 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))
- 13) 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 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.

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

The DOJ does not send CDSS certain necessary information: State law does not explicitly require DOJ to send information related to sentencing; 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 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 records 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 of 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 record of arrests and prosecutions (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;
- 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; 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.

The audit also recommended that state law be changed to prohibit CBCB from allowing an individual to be present in a licensed facility until it receives information from the FBI about out-of-state convictions. Current law allows for an individual to be present in a licensed facility in instances where the individual meets all other conditions for licensure and has submitted a self-disclosure form stating that they have never been convicted of a crime in the United States, but the CBCB has not received the person's federal criminal history from the FBI. The auditor's recommendation was based on the audit findings that CDSS did not consistently obtain and use self-disclosed conviction information. Specifically, the audit found that, contrary to state law, CDSS does not always obtain self-disclosure forms for all individuals it allows to access licensed facilities in advance of receiving their federal criminal history. The audit stated that:

“When the CBCB does not obtain self-disclosure forms before allowing individuals to be present in facilities, it may allow individuals with federal criminal histories into facilities prematurely... Therefore, a change to state law to require that CDSS receive both state and federal criminal history information before allowing individuals to be present in facilities would not unduly delay CDSS' exemption process, and it would eliminate the risk of initially allowing individuals into facilities before learning of their entire criminal history.”

Need for this bill: The provisions of this bill seek to further provide for the health and safety of individuals placed in certain community care facilities by removing the ability of CDSS to license an individual to be present in a facility upon receipt of a state criminal history and a self-disclosure form attesting that the individual has not committed a crime in the United States, but before the federal criminal history is received. The bill would instead prohibit CDSS from issuing a license to operate or be present in a community care facility until both the state and federal criminal histories have been received, and the individual has received a criminal record clearance or exemption pursuant to the current exemption process.

According to the author, “CDSS is tasked with protecting the health and safety of vulnerable populations. Through CCLD, CDSS is responsible for licensing and regulating more than 70,000 community care facilities throughout the state. These include child care facilities, foster family homes, and care facilities for the elderly. In 2016 a report released by the California State Auditor's Office stated that in some cases, CDSS failed to obtain self-disclosure forms for individuals and allowed them access to facilities in advance of receiving their federal criminal history. This failure to review an individual's complete criminal history creates a situation whereby dangerous or unauthorized individuals can be granted access to facilities that house or provide services to vulnerable populations. Clients under the care of CDSS rely on a system that

properly screens those who provide them care. Allowing unauthorized individuals to access licensed facilities exposes clients to unnecessary and potentially dangerous situations.”

Staff comments: The provisions of this bill seek to ensure greater health and safety for individuals placed in community care facilities by prohibiting CDSS from issuing licenses to applicants before receiving both a person’s state and federal criminal histories. By prohibiting this practice, the provisions of this bill would prevent individuals who do not have a criminal history in California, but have a criminal conviction for crimes in another state or states that require an exemption from having premature access to the vulnerable populations placed in community care facilities.

While the provisions of this bill may result in increased health and safety of residents, the Legislature has seen an increase in legislation in recent years related to health and safety in certain community care facilities, specifically as it pertains to the criminal background check process. Some proposals, including this one, have been introduced in response to the Auditor’s report and seek to increase the stringency of the existing criminal background check process, while others 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. 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 is necessary to determine if the existing criminal background check 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.***

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 awaiting hearing in the Assembly Appropriations Committee.

AB 1608 (Holden) of 2019 prohibits CDSS from requiring an applicant for a license to operate a community 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. AB 1608 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 instances 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

California Continuing Care Residents Association
California Police Chiefs Association
Consumer Attorneys of California
County of San Diego

Opposition

None on file

Analysis Prepared by: Kelsy Castillo / HUM. S. / (916) 319-2089