

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Lisa Calderon, Chair

AB 677 (Holden) – As Amended April 15, 2021

**SUBJECT:** Care facilities: criminal background checks

**SUMMARY:** Requires the California Department of Social Services (CDSS) to convene a working group no later than July 1, 2022, to make recommendations related to the criminal record exemption process; prohibits CDSS from requiring certain individuals subject to the criminal background check process to self-disclose their criminal history information; and, requires CDSS to annually post on its internet website certain data related to criminal record clearance and exemption approvals and denials. Specifically, **this bill:**

- 1) Defines “department” as CDSS for purposes of this bill related to a working group.
- 2) Requires CDSS, on or before July 1, 2022, to convene a working group to make recommendations and propose revised regulations to change the criminal record exemption process in order to expedite the process for individuals who seek licensure from CDSS, as specified, and who have a criminal conviction.
- 3) Requires CDSS to appoint members of the working group, and, further, requires the working group to include, but not be limited to: a person with an arrest or conviction who applied for a license or certification from CDSS and was required to go through the standard criminal record exemption process; a representative from a nonprofit organization that has direct and sustained experience helping people through the standard criminal record exemption process; a representative of the Department of Justice (DOJ); and, a representative of an assisted living organization.
- 4) Requires, on or before July 1, 2024, the working group to propose revisions to CDSS’ regulations to expedite the process for individuals who seek licensure from CDSS, as specified, and who have a criminal conviction. Further, requires CDSS to submit the working group’s proposed revision to the office of Administrative Law within one month of finalization by the working group.
- 5) Requires, on or before July 1, 2023, CDSS to report to the Legislature on the status of the working group. Further, subjects all meetings of the working group to the Bagley-Keene Open Meeting Act, as defined by current law.
- 6) Makes inoperative the provision of this bill related to the working group as of January 1, 2025, and repeals those provisions as of that date.
- 7) Deletes, for community care facilities, Residential Care Facilities for Persons with Chronic Life-Threatening Illness (RCFCLTIs), Residential Care Facilities for the Elderly (RCFEs), or child day care facilities, the requirement that certain individuals subject to the criminal record background check process, sign a declaration under penalty of perjury regarding any prior convictions, and, further, prohibits CDSS from requiring these individuals to self-disclose their criminal history information, except in instances regarding out-of-state convictions for

sex offense crimes that, if committed within California, would require a person to register with the Sex Offender Registration Act, as specified by current law.

- 8) Defines “applicant” as an individual who submitted fingerprints to DOJ for the purpose of providing criminal record information to CDSS, and, further, instructs CDSS to post on its internet website and make publicly available the following information for each year:
  - a) The total number of applicants;
  - b) The total number of applicants granted a criminal record clearance;
  - c) The total number of applicants notified that they had a non-exemptible conviction; and,
  - d) The following information regarding applicants notified by CDSS that the applicant required a criminal record exemption:
    - i) The total number of applicants notified by CDSS that they required a criminal record exemption;
    - ii) The total number of applicants who requested a criminal record exemption and were granted a restricted conditional criminal record exemption following the initial request for a criminal record exemption;
    - iii) The total number of applicants who requested a criminal record exemption and were denied an exemption following the initial request for exemption.
- 9) Requires data to be published in aggregate and without any personally identifying information, and, further, requires CDSS, no later than January 1, 2023, to issue a report with its findings, as specified.

**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 Section [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 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” 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 RCFEs, 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 Section [PEN] 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 (FBI’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 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 FBI 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))
- 16) Establishes the Sex Offender Registry Act, and requires certain individuals for a specified amount of time, while residing on California, or while attending school or working in California, to register with the chief of police of the city in which the person is residing, or the sheriff of the county if the person is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of policy of a campus of the University of California, the California State University, or community college if the person is residing upon the campus or in any of its facilities, within five working days of coming into, or changing the person's residence within, any city, county, or city and county, or campus in which the person temporarily resides, and requires the individual to register thereafter in accordance with the Act, unless the duty to register is terminated. (PEN 290 *et seq.*)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

***Community Care Licensing Division:*** 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. As of July 1, 2020, CCLD licensed 72,670 total facilities with the capacity to serve 1,420,233 individuals.

***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, as well as sign a declaration under penalty of perjury regarding any prior criminal convictions.

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 for licensure, licensee, and 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 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.

***Changes to the Caregiver Background Check Bureau procedures:*** In 2018, CBCB conducted a workload analysis and determined that the time required for less complex cases, including simplified exemptions, exemption transfers, and non-exemptible crimes, could be reduced. As a result, in November 2018, CBCB implemented a new unit to process non-exemptible, simplified, and transfer cases. According to CDSS, since the new unit was created, the average number of days to process a simplified exemption decreased from 200 days to seven days, and the average number of days to process a transfer request decreased from 30 days to 11 days. CDSS estimated that it took 72% less time for CBCB to process cases as a result of these changes, and the backlog in cases decreased from 7,000 to just under 2,500. Additionally, in 2020 CBCB implemented Guardian, a new background check system that works to ensure background checks are completed quickly and efficiently, while also making the process easier for applicants and facilities to request exemptions. Through Guardian, facilities may process clearance and exemption transfers and manage staff rosters online, and regional offices and Licensing Program Analysis may access Guardian in the field to check eligibility status and view facility rosters. Guardian also permits users to upload documents electronically, track exemption status, and receive communications.

***Need for this bill:*** The provisions of this bill seek to further the changes made to the criminal background check process. Specifically, this bill would require CDSS to convene a working group, no later than July 1, 2022, to make recommendations and propose revised regulations to change the criminal record exemption process in order to expedite the process for individuals seeking licensure from CDSS. This bill would also require CDSS to post on its internet website certain data related to the criminal background check process, including the total number of

criminal record clearances granted, the total number of applicants notified that they had a non-exemptible conviction, and total number of applicants who requested a hearing after being denied an exemption. Finally, this bill would prohibit CDSS from requiring individuals subject to the criminal background check process to disclose their criminal history information, with the exception of out-of-state convictions for sex offense crimes that would require a person to register with the Sex Offender Registration Act.

According to the author, “CDSS requires any applicant who has ever been convicted of any crime, other than a minor traffic violation, to obtain a criminal record ‘exemption’ from CDSS before they can work in a facility (i.e. community care facility, residential, elderly, child care). CDSS can and does deny exemptions based on convictions, even if the conviction is very old or unrelated to caregivers’ work, and even when applicants have shown success as caregivers. While ensuring the safety of the young and elderly should always be of the utmost importance, the system CDSS uses is inefficient and has duplicative processes that can disadvantage good applicants. These overly burdensome criminal record screening rules, given the disproportionate rate of arrests and low-level criminal convictions in communities of color, cause people of color to have a difficult task in advancing these caregiver roles without the proper licensing. The bill removes a duplicative process by prohibiting CDSS from requiring applicants to disclose any information regarding their criminal history as a condition of employment.”

#### **PRIOR AND RELATED LEGISLATION:**

***AB 1608 (Holden) of 2019***, was substantially similar to this bill and 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 on its internet website certain data related to criminal record clearance and exemption approvals and denials, 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 held in the Senate Human Services Committee.

***AB 367 (Flora) of 2019***, would have included certain instances of spousal rape, pandering (not of a minor), and pimping (not of a minor), among the crimes for which a criminal background check exemption may not be granted. AB 367 was held on the Assembly Appropriations Committee’s suspense file.

***AB 447 (Patterson) of 2019***, would have created 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 was held on the Assembly Appropriations Committee’s suspense file.

***AB 1796 (Levine) of 2019***, as introduced, would have prohibited CDSS from granting a criminal record clearance or exemption until it receives a complete state and federal criminal record. AB 1796 was amended on June 24, 2019, to pertain to domestic violence restraining orders.

***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 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.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Alameda County Public Defender's Office  
Community Legal Services in East Palo Alto  
Legal Aid At Work  
Legal Services for Prisoners With Children  
National Association of Social Workers, California Chapter

**Opposition**

None on file

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