

Date of Hearing: May 8, 2019

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

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

Policy Committee: Human Services

Vote: 8 - 0

Urgency: No

State Mandated Local Program: No

Reimbursable: No

**SUMMARY:**

This bill prohibits the Department of Social Services (DSS) 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 (DOJ). Specifically, this bill:

- 1) Repeals the ability of DSS 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.
- 2) Instead, prohibits DSS from granting a criminal record clearance or exemption until it receives an individual's complete state and federal criminal record.

**FISCAL EFFECT:**

- 1) Estimated one-time costs of \$500,000 (GF) to DSS for two 12-month contracts to implement the necessary automation changes.
- 2) Unknown, one-time costs to DSS for increased workload to update necessary forms and procedures and to disseminate information regarding the changes to counties.

**COMMENTS:**

- 1) **Purpose.** This bill seeks 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 before the federal criminal history is received. According to the author:

DSS is tasked with protecting the health and safety of vulnerable populations. Through CCLD, DSS 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, DSS 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.

- 2) **Background.** The Community Care Licensing Division (CCLD) within DSS provides licenses and investigates complaints against facilities within its jurisdiction, which includes RCFEs and child care facilities, among others, in order to provide for the health and safety of the vulnerable populations in those facilities. These facilities typically provide non-medical care and supervision for children and adults in need, which includes families needing early childhood education (child care), children in foster care and at-risk youth needing shelter services, seniors needing residential care and individuals with disabilities.
- 3) **Criminal Background Checks.** Existing law requires DSS to perform background checks on applicants, licensees, adult residents, employees and certain volunteers in community care facilities who come into contact with clients. In January 1992, DSS created the Caregiver Background Check Bureau (CBCB) within CCLD in order to help protect children and vulnerable individuals receiving care. An individual seeking clearance must submit fingerprints that allow the DOJ to conduct a criminal history check. If the individual has no criminal history, a clearance notice is sent to the individual and the CBCB. If, however, the individual has a criminal record, DOJ sends a criminal record transcript to the CBCB, which then reviews the history and determines if the convictions are for crimes that may be exempted under current law.

Existing law prohibits DSS from offering exemptions to individuals who have been convicted of certain serious crimes, including convictions for murder, kidnapping and incest, and cannot allow individuals convicted of committing these crimes to be in a licensed facility. Additional non-exemptible crimes include convictions for possession of child pornography, sexual exploitation of a child, elder or dependent abuse, and arson.

#### 4) **Related Legislation.**

AB 367 (Flora), of this legislative session, 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 has not yet been heard the Assembly Human Services Committee.

AB 447 (Patterson), of this legislative session, creates a process by which licensees 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 pending on the Assembly Floor

AB 1809 (Holden), of this legislative session, prohibits DSS 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, and 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. AB 1809 is pending hearing in this committee.

#### 5) **Prior Legislation.**

AB 1914 (Flora), Chapter 708, Statutes of 2018, as introduced, would have expanded the list of non-exemptible crimes per a recommendation in the State Auditor's report. AB 1914 was amended to an unrelated topic.

AB 3039 (Holden), of the 2017-18 Legislative Session, 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 this committee's Suspense File.

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