

ASSEMBLY THIRD READING

AB 1796 (Levine)

As Amended April 11, 2019

Majority vote

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.

Major Provisions

- 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) Repeals certain provisions of statute enacted by SB 80 (Committee on Budget and Fiscal Review), Chapter 27, Statutes of 2019 and AB 819 (Stone), Chapter 777, Statutes of 2019 related to the criminal background check procedure.
- 6) Makes technical changes.

COMMENTS:

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. In the event that an individual has a criminal history, Department of Justice (DOJ) sends a record transcript to CDSS, detailing the person's arrests and convictions. If the crimes meet the criteria necessary to qualify for an exemption, pursuant to current law, CDSS 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 CDSS. 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, and, in response to these findings, made a number of recommendations, among which was the recommendation 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.

Staff comments: Certain provisions of this bill repeal statutory changes related to the criminal background check process as they were enacted by SB 80 (Committee on Budget and Fiscal Review), Chapter 27, Statutes of 2019 and AB 819 (Stone), Chapter 777, Statutes of 2019. *Should this bill move forward, the author may wish to make amendments to the provisions of this bill to ensure conformity with previously enacted legislation.*

According to the Author:

According to the author, "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...Allowing unauthorized individuals to access licensed facilities exposes clients to unnecessary and potentially dangerous situations."

Arguments in Support:

Writing in support of this bill, the County of San Diego states, "By prohibiting CDSS from issuing a community care facility license until it receives complete state and federal criminal history information on the applicant, [this bill] further protects the health and safety of the vulnerable individuals who utilize community care facilities."

Arguments in Opposition:

Writing in opposition to the bill, 6Beds, Inc. writes "[This bill] will create delays of several days to weeks (in the case of federal government shutdown) in filling vacancies by requiring licensees to wait for the FBI criminal clearance even after receiving state DOJ background clearance."

FISCAL COMMENTS:

According to the Assembly Appropriations Committee:

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

VOTES:

ASM HUMAN SERVICES: 8-0-0

YES: Reyes, Mathis, Luz Rivas, Choi, Friedman, Gipson, Maienschein, Mark Stone

ASM APPROPRIATIONS: 18-0-0

YES: Gonzalez, Bigelow, Bloom, Bonta, Brough, Calderon, Carrillo, Chau, Megan Dahle, Diep, Eggman, Fong, Gabriel, Eduardo Garcia, Maienschein, Petrie-Norris, Quirk, Robert Rivas

UPDATED:

VERSION: April 11, 2019

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