

Date of Hearing: March 22, 2022

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Lisa Calderon, Chair

AB 1720 (Holden) – As Amended March 7, 2022

SUBJECT: Care facilities: criminal background checks

SUMMARY: Requires the California Department of Social Services (CDSS) to establish a process to grant a simplified criminal record exemption to an applicant seeking a license or position within various community care facilities and removes the requirement for such individual to sign a declaration under penalty of perjury regarding prior criminal convictions. Specifically, **this bill:**

- 1) Provides CDSS with the option to provide a criminal record exemption pursuant to existing processes or under the provisions established by this bill.
- 2) Prohibits CDSS from requiring an applicant seeking a license to operate or be employed in a care facility, including residential care facilities for persons with chronic, life-threatening illness, Residential Care Facilities for the Elderly (RCFEs), and child daycare centers, to self-disclose their criminal history information upon application.
- 3) Prohibits CDSS from requiring a home care aide applicant to self-disclose their criminal history information upon application.
- 4) Requires CDSS to grant a simplified criminal record exemption if an individual meets all of the following criteria:
 - a) The individual does not have a demonstrated pattern of criminal activity;
 - b) The individual has convictions arising from a single incident of criminal conduct;
 - c) The conviction is a nonviolent misdemeanor and did not pose a risk of harm to a child or vulnerable individual. Further, defines "risk of harm to a child or vulnerable individual" to mean harm that is probable, not just possible; and,
 - d) At least five consecutive years have passed since the date of the convictions.
- 5) Requires CDSS to consider granting simplified criminal record exemptions only to individuals who meet all of the following criteria:
 - a) The individual has convictions arising from five or fewer incidents of criminal conduct resulting in nonviolent misdemeanor convictions;
 - b) The individual has not been convicted of a crime within the last five years;
 - c) The individual has not been convicted of a felony; and,
 - d) The individual has not been convicted of a specific crime deemed ineligible for exemption under current law, as specified.

- 6) Allows CDSS, at its discretion, to require an individual who is otherwise eligible for a simplified exemption process to complete the standard exemption process if the department determines that completing the standard process will protect the health and safety of children and adults placed in community care facilities.
- 7) Clarifies that a simplified criminal exemption granted by the department does not relieve an individual from compliance with other required screenings.
- 8) Makes technical and conforming changes.

EXISTING LAW:

- 1) Establishes the California Community Care Facilities Act (CCFA) and requires CDSS to administer and license community care facilities providing nonmedical services, including Adult Residential Facilities (ARFs) and RCFEs, among others. (Health and Safety Code Section [HSC] 1500 *et seq.*)
- 2) Establishes the "California Child Daycare Facilities Act," creating a separate licensing category for child daycare centers and family daycare homes within the CDSS existing licensing structure. (HSC 1596.70 *et seq.*)
- 3) Defines "residential facility" as any family home, group care facility, or similar facility determined by the department for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual. (HSC 1502 (a)(1))
- 4) Defines a "residential care facility for the elderly" as a housing arrangement chosen voluntarily by persons 60 years of age or older 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))
- 5) Defines "community care facility" to mean 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, individuals with physical disabilities or mental impairments and abused or neglected children. (HSC 1502 (a))
- 6) 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)
- 7) 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))

- 8) 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))
- 9) 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 FBI as the result of an application for licensing, employment, certification, or approval. (Penal Code Section [PEN] 11105.2(a))
- 10) Enumerates the criteria that CDSS or other approving entity is required to consider when granting a criminal records exemption, which includes, but is not limited to: the nature of the crime or crimes; the period of time since the crime was committed; and the number of offenses, among others, as specified. (HSC 1522(g))
- 11) 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))
- 12) Requires CDSS, before issuing a license to a person or persons to operate or manage a residential care facility, to secure a criminal record to determine whether the applicant has ever been convicted of a crime, as specified. (HSC 1568.09(a)(1))
- 13) Requires CDSS, before issuing a license to a person or persons to operate or manage a residential care facility for the elderly, to secure a criminal record to determine whether the applicant has ever been convicted of a crime, as specified. (HSC 1569.17)
- 14) Requires CDSS, before issuing a license to a person or persons to operate or manage a day care facility, to secure a criminal record to determine whether the applicant has ever been convicted of a crime, as specified. (HSC 1596.871)
- 15) Delineates factors for CDSS to consider when determining home care aid applicants, including a review of the applicant's criminal offender record, as specified. (HSC 1796.19)
- 16) Requires individuals initiating a background examination to be a home care aide to be fingerprinted and submit a signed declaration under penalty of perjury regarding past criminal convictions to CDSS. (HSC 1796.23)
- 17) Requires CDSS to establish and update a home care aide registry with specified information on an individual who has submitted a home care aide application. (HSC 1796.24)
- 18) Provides that CDSS may deny a home care aide applicant and revoke registration if specified circumstances occur. (HSC 1796.25)
- 19) Enumerates the criteria for CDSS to revoke or deny a registered home care aide's registration or request for registration. (HSC 1796.26)

FISCAL EFFECT: Unknown

COMMENTS:

Community Care Facilities: The CCFA, enacted in 1973, contains the provisions for various community-based housing options for the elderly and disabled. The CCFA seeks to provide a new system of community-based care for those who require additional supervision and services that are determined to be nonmedical. Facilities established under the act provide care to individuals with disabilities, seniors, children in foster care, families who need early child education, and those with severe behavioral, emotional, or mental disorders.

Community Care Licensing Division (CCLD): Facilities created under the CCFA are administered through CDSS. The CCLD, located within the department, is responsible for regulating various community care facilities. In addition to licensing, the division ensures regulatory compliance and enforcement when necessary. According to the state website, the mission of the CCLD is to "promote the health, safety, and quality of life of each person in community care through the administration of an effective collaborative regulatory enforcement system." A variety of facilities fall under the purview of this division, including adult day programs, transitional shelters, group homes, foster family homes, homeless youth shelters, child care centers, and others.

Licensed Residential Facilities: Licensed residential facilities include any family home, group care facility, or similar facility that provides 24-hour nonmedical care to individuals in need of personal services, supervision, or assistance to complete daily living tasks. A licensed residential facility may have multiple licenses, depending on levels of care and services provided.

Residential Care Facilities: Residential care facilities provide housing and care to individuals who live with chronic, life-threatening illnesses. A residential care facility is categorized as providing hospice-level care and services to individuals who have been diagnosed as terminally ill. These facilities provide housing and care to individuals that are 18 years or older or that have been deemed emancipated minors. These facilities may also provide room and board to those receiving personal care services if necessary.

Residential Care Facility for the Elderly (RCFE): An RCFE is categorized as providing nonmedical care and supervision to individuals with specific daily living needs. These facilities primarily offer support to those 60 years or older who do not need 24-hour services. RCFE populations often have functional and cognitive impairments that limit their ability to complete various living tasks, but their medical conditions are managed either by themselves or by an outside medical professional. An RCFE may additionally be licensed as a residential care facility, allowing them to take in residents who need a hospice level of care.

Adult Residential Facility (ARF): ARFs, also categorized as a licensed residential facility, provide nonmedical care and services to residents age 18-59 or those 60 and older who meet specific requirements. These facilities are open 24-hours a day and assist those with a mental, physical, or developmental disability. Residents of ARFs can receive assistance with various daily living tasks such as housekeeping, personal hygiene upkeep, bathing, dressing, distribution of medication, and general supervision. While ARFs are not required to provide additional medical services, these facilities may offer hospice-level care under the residential care facility license.

Child Day Care Facilities: The California Child Daycare Facilities Act contains regulations to establish, among other things, general health and safety requirements, staff-to-child ratios, and provider training requirements for child care facilities within the state. Child day care centers seek to provide a nurturing nonmedical environment for children under 18 years of age and provide personal services, supervision and protection for the youth on less than a 24-hour basis. Child day care facilities includes day care centers, employer-sponsored child care centers, and family day care homes.

Background Check Audit Report: Released in March 2017, the State Auditor examined the timeliness and quality of CDSS background procedures for individuals who have contact with clients in community care facilities. The office released a report that included a number of findings, and, in response, made several 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, establish timeframes by which CDSS must evaluate and issue exemption decisions, among other recommendations.

Criminal background checks: Across the state, before an individual can obtain a community care license or work and provide services in a community care facility, the applicant must undergo a uniform criminal background check process through CDSS. Administered by the Care Provider Management Bureau within CDSS, the process currently requires individuals to submit fingerprints and sign a declaration under penalty of perjury regarding any prior criminal convictions. DOJ processes the background check against their records and reports convictions to the Care Provider Management Bureau (CPMB).

If an applicant's background check shows criminal history other than minor traffic offenses, the Bureau sends an exemption notification letter to the individual containing options for an exemption, if applicable. CDSS is prohibited 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. Individuals awaiting approval may not be present in a facility until CPMB grants an exemption. When considering whether to grant an exemption for qualifying crimes, the Bureau may currently use one of two methods:

Simplified exemption: Simplified exemptions are used for individuals convicted of one nonviolent misdemeanor over five years old and consist of examining an applicant's records of arrests and prosecutions 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. While an individual may qualify for the simplified exemption process, CDSS has the discretion to require the more robust, standard exemption process if health and safety concerns exist.

Standard exemption: 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.

Care Provider Management Bureau Changes: In 2018, CPMB 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, CPMB 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 CPMB to process cases due to these changes, and the backlog in cases decreased from 7,000 to just under 2,500.

Additionally, in 2020 CPMB 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 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: This bill prohibits CDSS from requiring an applicant for specific care facilities to self-disclose their criminal history, in addition to making changes to criteria required for CDSS to process simplified exemptions. The provisions seek to strike a balance between protecting the health and safety of residents while ensuring that potential caregivers and facility staff are not burdened with lengthy delays due to unrelated convictions. As the unmet need in our community care workforce continues to grow and California moves forward in advancing our criminal justice reform, it is crucial that we amend policies to reflect our understanding and commitment to rehabilitation while prioritizing the safety of the vulnerable.

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, residential, elderly, child care). CDSS can and does deny exemptions based on conviction, 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 utmost importance, the system CDSS uses is inefficient and has duplicative processes that can disadvantage good applicants, ultimately negatively affecting the caregiving system and those who depend on it. 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 in 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."

RELATED AND PRIOR 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 referred to the Senate Human Services Committee but was not set for hearing.

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 substantially amended on June 24, 2019, such that it no longer fell in the jurisdiction of the committee.

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 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.

SB 213 (Mitchell), Chapter 733, Statutes of 2017, streamlined the background check process for prospective and adoptive parents by establishing a list of non-exemptible crimes, a list of crimes for which an exemption may be granted, and a list of crimes for which exemptions must be granted, absent a reasonable belief that the person is not of good character at present.

SB 942 (Liu) of 2016, would have required that criminal records checks be conducted within a specified timeframe and would have required various hearings if the county fails to meet those time frames, and would have authorized placement of a child in a home in which an exemption is pending under circumstances in which the county is found to have abused its discretion. SB 942 was held on the Assembly Appropriations suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

East Bay Community Law Center (Sponsor)
A New Way of Life Reentry Project
Alameda County Public Defender's Office

Alliance for Boys and Men of Color
California for Safety and Justice
Community Legal Services in East Palo Alto
East Bay Family Defenders
Ella Baker Center for Human Rights
Initiate Justice
Legal Aid At Work
Legal Services for Prisoners With Children
Mental Health Advocacy Services
National Association of Social Workers, California Chapter
National Employment Law Project
REDF
Root & Rebound
Rubicon Programs
Sister Warriors Freedom Coalition
Starting Over, INC.

Opposition

None on file

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