

ASSEMBLY THIRD READING

AB 1720 (Holden)

As Amended March 7, 2022

Majority vote

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.

Major Provisions

- 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 specified criteria.
- 5) Requires CDSS to consider granting simplified criminal record exemptions only to individuals who meet specified criteria.
- 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.

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.

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.

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."

Arguments in Support

A supporter of the bill, the Ella Baker Center for Human Rights, state that, "CDSS requires unreasonably long timeframes to approve exemptions based on very old and unrelated convictions. This processing time, of more than 100 days, effectively cuts large numbers of applicants, who would be approved, out of the process. Low-income women of color are hit especially hard by CDSS's inefficient and unreasonable criminal record screening rules, given the disproportionate rate of arrests in communities of color. These women often seek caregiver-related work based on past experience and success in those roles, a desire to serve their communities, and opportunities for career advancement and entrepreneurship. [This bill] will streamline the licensure process for those that have been convicted of a minor and old crime to ensure that an unrelated prior conviction does not prohibit a qualified, rehabilitated person from securing employment."

Arguments in Opposition

None on file

FISCAL COMMENTS

According to the Assembly Appropriations Committee on April 27, 2022, this bill has:

- 1) Estimated ongoing General Fund (GF) costs to CDSS in the range of \$3 million to \$4 million annually, to support additional workload to assess the risk of harm to a child or vulnerable individual, as required by the bill. CDSS indicates this requirement would slow down the simplified exemption process significantly, adding to the workload of ordering law enforcement records for every case with criminal history.
- 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: 7-0-1**

YES: Calderon, Arambula, Mia Bonta, Bryan, Stone, Villapudua, Waldron

ABS, ABST OR NV: Davies

ASM APPROPRIATIONS: 12-3-1

YES: Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

NO: Bigelow, Megan Dahle, Fong

ABS, ABST OR NV: Davies

UPDATED

VERSION: March 7, 2022

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