
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 1720 **Hearing Date:** June 28, 2022
Author: Holden
Version: June 21, 2022
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Care facilities: criminal background checks*

HISTORY

Source: East Bay Community Law Center

Prior Legislation: SB 354 (Skinner, Chapter 687, Statutes of 2021)
AB 1608 (Holden) 2019 not heard Senate Human Services
AB 367 (Flora) 2019 held Assembly Appropriations
AB 447 (Patterson) 2019 held in Senate Appropriations
AB 3039 (Holden) 2018 held Assembly Appropriations
SB 213 (Mitchell) Chapter 733, Stats. 2017

Support: A New Way of Life Reentry Project; Alameda County Public Defender's Office; Californians for Safety and Justice; California Public Defenders Association; Community Legal Services in East Palo Alto; Ella Baker Center for Human Rights; Legal Services for Prisoner With Children; National Association of Social Workers, California Chapter; National Employment Law Project; Pillars of The Community; Root and Rebound

Opposition: California Assisted Living Association (unless amended)

Assembly Floor Vote: 50 - 17

PURPOSE

The purpose of this bill is to require the Department of Social Services (CDSS) to process a simplified criminal record exemption for individuals who meet certain criteria and are seeking a license to operate, be employed by, or otherwise have contact with clients in a community care facility or be registered as a home care aide. This bill additionally removes the requirement for those individuals to sign a declaration under penalty of perjury regarding prior criminal convictions.

Existing law establishes the California Community Care Facilities Act, which provides regulatory structure for a coordinated and comprehensive statewide system of care for individuals with mental illnesses, individuals with disabilities, and children and adults who require care or services provided by licensed community care facilities. (Health and Safety Code (HSC) § 1500 et seq.)

Existing law defines “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, and includes: residential facilities, adult day programs, foster family agencies, group homes, and children’s crisis residential programs, among others. (HSC §1502 et seq.)

Existing law requires an individual to obtain either a criminal record clearance or a criminal record exemption from CDSS before their initial presence in a community care facility or certified family home, as specified. (HSC §1522 et seq.)

Existing law establishes a regulatory structure for licensed residential care facilities for persons with chronic life-threatening illness that serve people who are 18 years of age or older or are emancipated minors and requires license holders to provide basic services for each resident, as specified. (HSC § 1568.01 et seq.)

Existing law requires an individual to obtain either a criminal record clearance or a criminal record exemption from CDSS before their initial presence in residential care facilities for persons with chronic life-threatening illness, as specified. (HSC §1568.09 et seq.)

Existing law establishes the California Residential Care Facilities for the Elderly (RCFE) Act, which requires facilities that provide personal care and supervision, protective supervision, or health related services for persons 60 years of age or older who voluntarily choose to reside in those facilities to be licensed. (HSC § 1569 et seq.)

Existing law defines RCFE as a housing arrangement chosen voluntarily by individuals ages 60 and older, or their authorized representative, where care and services, as specified, are provided based upon individuals’ varying needs, as determined, in order for them to be admitted and remain in the facility. (HSC § 1569.2(o)(1))

Existing law requires an individual to obtain either a criminal record clearance or a criminal record exemption from CDSS before their initial presence in a RCFE, as specified. (HSC §1569.17 et seq.)

Existing law establishes the California Child Day Care Facilities Act to provide a comprehensive, quality system for licensing child day care facilities to ensure that working families have access to healthy and safe child care providers and that child care programs contribute positively to a child's emotional, cognitive, and educational development, and are able to respond to, and provide for, the unique characteristics and needs of children. (HSC § 1596.70 et seq.)

Existing law defines “child day care facility” to mean 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. Child day care facilities include day care centers, employer-sponsored childcare centers, and family day care homes. (HSC § 1596.750)

Existing law requires an individual to obtain either a criminal record clearance or a criminal record exemption from CDSS before their initial presence in a child day care facility, as specified. (HSC § 1596.871 et seq.)

Existing law 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))

Existing law 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))

Existing law 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)

Existing law requires an individual to obtain either a criminal record clearance or a criminal record exemption from CDSS before they may be listed on the home care aide registry. (HSC § 1796.24))

Existing law 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 § 11105.2(a))

Existing law requires DOJ to notify CDSS within 14 calendar days of the criminal record information and, if no criminal information has been recorded, provide a statement of that fact. (HSC § 1522(c)(2))

This bill prohibits the CDSS from requiring that various individuals seeking a license to operate, be employed by, or otherwise have contact with clients in a community care facility, including residential care facilities for persons with chronic, life-threatening illness, Residential Care Facilities for the Elderly (RCFEs), and child daycare facilities, sign a declaration under penalty of perjury regarding any prior criminal convictions. Retains the requirement that those individuals be fingerprinted in order to obtain either a criminal record clearance or an exemption from CDSS prior to employment, residence, or initial presence in a community care facility.

This bill removes the requirement that a person initiating a background examination to be a registered home care aide sign a declaration under penalty of perjury regarding any prior criminal convictions. Retains the requirement that a person initiating a background examination to be a registered home care aide be fingerprinted in order to obtain either a criminal record clearance or an exemption from CDSS prior to becoming a registered home care aide.

This bill requires CDSS to process a simplified criminal record exemption for certain individuals, excluding individuals applying to operate a foster family home, certified family home, or be a resource family, as provided.

This bill 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, as defined by CDSS;
- b) The individual has convictions arising from a single incident of criminal conduct;
- c) The individual's conviction(s) is a nonviolent misdemeanor and does not pose a risk of harm to a child or vulnerable individual, meaning harm that is probable, not just possible; and
- d) At least five consecutive years have passed since the date of the convictions.

This bill requires CDSS to consider granting a simplified criminal record exemption if an individual meets 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 specified crimes deemed ineligible for exemption under existing law, as specified.

This bill allows CDSS to require, at its discretion, an individual who is otherwise eligible for a simplified exemption to complete the standard exemption process if CDSS determines that completing the standard exemption process will protect the health and safety of children and adults placed in community care facilities.

This bill states that a simplified criminal record exemption granted according to these provisions does not relieve the person from compliance with other applicable screening provisions.

This bill makes other technical changes.

COMMENTS

1. Need for This Bill

According to the author:

This bill would require the department to establish a process to grant a simplified criminal record exemption to an applicant for a license or special permit to operate or manage these facilities and the specified individuals connected with these facilities, if certain criteria is met. The bill would no longer require specified individuals connected with these facilities or home care aide applicants to sign a declaration under penalty of perjury regarding any prior criminal convictions. The bill would also prohibit the department from requiring an applicant for a license to disclose their criminal history information.

2. Community Care Licensing Division (CCLD)

CDSS's Community Care Licensing Division (CCLD) licenses and oversees community care facilities—including child care facilities, foster family homes, and residential care facilities for the elderly—throughout California. These facilities typically provide non-medical care and supervision for children and adults in need, including individuals with disabilities, older adults in

residential care, children in foster care, and children in child day care facilities. As of June 2021, there are 67,622 licensed community care facilities in the state with total capacity to serve approximately 1.4 million Californians.

All facilities licensed by CDSS must meet minimum licensing standards, as specified in California's Health and Safety Code and Title 22 regulations. CDSS conducts pre- and post-licensing inspections for new facilities and unannounced visits to licensed facilities under a statutorily required timeframe.

3. Home Care Aide Registry

The Home Care Services Bureau (HCSB), under CDSS, is responsible for licensing home care organizations, including processing applications, receiving and responding to complaints, and conducting unannounced visits to ensure compliance. HCSB is also responsible for the home care aide application process and maintenance of the Home Care Aide Registry, which is a public online registry for home care aides who have been background checked. The Home Care Aide Registry is intended to promote consumer protection for older adults and individuals with disabilities who hire private aides to come into their homes and provide assistance with activities of daily living.

4. Criminal Background Checks

State law requires all applicants, licensees, adult residents, volunteers under certain conditions, and employees of licensed facilities who have contact with clients, to be subject to a fingerprint based background check through DOJ. Registered home care aides are also subject to a background check.

If an individual has no history of arrests and convictions, a clearance notice is sent to CDSS. If an individual has a criminal history, a separate process will result in either a denial or exemption. If the criminal history includes the crimes are eligible for exemption under current law, CDSS will send an exemption notification letter to the applicant or licensee and to the individual. Individuals awaiting an exemption may not be present in a facility until an exemption is granted. If the criminal history shows arrests for crimes that may not be exempted, CDSS will deny the individual.

In the event that a previously cleared employee commits a crime resulting in a subsequent arrest that warrants revocation of his or her criminal record clearance or exemption, CCLD contacts the local regional office of the facility to determine the whereabouts of the employee for purposes of an on-site visit and/or notification and potential removal from the premises.

5. Exemptions

An exemption is a CDSS-authorized written document that "exempts" the individual from the requirement of having a criminal record clearance. CDSS is prohibited by law from granting exemptions to individuals convicted of certain "non-exemptible" crimes. Currently, there are 60 non-exemptible crimes, including murder, rape, torture, kidnapping, and crimes requiring sex offender registration. If an individual is convicted of a non-exemptible crime, that individual cannot work in any licensed facility or for a health care organization, and an individual's application will be denied or the license revoked based on the conviction. CDSS also has the

authority and responsibility to investigate arrests to determine if the underlying conduct is substantiated and therefore presents a risk to the health and safety of clients who are in care.

When considering an exemption for individuals who have committed crimes that are exemptible, CDSS is required to consider a number of factors, including, but not limited to: the nature of the crime, including whether it involved violence; the period of time since the crime was committed and number of offenses; the circumstances surrounding the crime; activities since conviction, such as employment or participation in therapy or education; pardons granted; character references; a certificate of rehabilitation from a superior court; and, evidence of honesty and truthfulness. CDSS is also required to consider the individual's age at the time the crime was committed. CDSS also has the authority to grant a criminal record exemption that places conditions on the individual's continued licensure and employment or presence in a licensed facility.¹

6. Standard and simplified exemption processes

Regulations establish criteria for CDSS to grant a criminal record exemption using either a standard exemption process or a simplified exemption process.² Pursuant to regulations, CDSS may consider granting a standard exemption for an individual who has not been convicted of any non-exemptible crime or violent felony, as defined, and who provides CDSS with substantial and convincing evidence of good character. Regulations further establish criteria for issuing a standard exemption based on the type of crime and length of time that has passed since the completion of incarceration, probation, or parole, as follows:

- The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.
- The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
- The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
- The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
- The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
- The individual has not been convicted of a violent felony.

The above criteria establish conditions under which CDSS may consider granting a standard exemption to an individual; however CDSS is not required to process any standard exemption.

Under the simplified exemption process, CDSS is required to consider granting, but is not required to process, a simplified criminal record exemption only if the individual meets all of the following criteria:

¹ 22 CCR 80019.1

² *Id.*

- Does not have a demonstrated pattern of criminal activity;
- Has one or more convictions arising from a single incident of criminal conduct;
- Each conviction is a misdemeanor and is for a crime that is nonviolent and does not pose a risk of harm to an individual; and
- It has been at least five consecutive years since the date of the conviction.

CDSS is allowed to require an individual who is otherwise eligible for a simplified exemption to go through the standard exemption process if CDSS determines such action will help protect the health and safety of clients.³

This bill would codify criteria similar to the simplified criminal record exemption that currently exists in regulations. While regulations require CDSS to consider granting a simplified exemption for individuals who meet the simplified exemption criteria above, this bill would require CDSS to process a simplified exemption for an individual who meets all of the following criteria:

- Does not have a demonstrated pattern of criminal activity, as defined by CDSS.
- Has convictions arising from a single incident of criminal conduct.
- The conviction is a nonviolent misdemeanor and does not pose a risk of harm to a child or vulnerable individual, as defined.
- At least five consecutive years have passed since the date of the convictions.

In addition, this bill would establish a second set of criteria by which CDSS would be required to consider granting a simplified exemption, but would not be required to process a simplified exemption, for an individual who meets all of the following:

- Has convictions arising from five or fewer incidents of criminal conduct resulting in nonviolent misdemeanor convictions.
- Has not been convicted of a crime within the last five years.
- Has not been convicted of a felony.
- Has not been convicted of a non-exemptible crime, as defined.

This bill continues to allow CDSS to require an individual who is otherwise eligible for a simplified exemption to complete the standard exemption process if CDSS determines it will protect the health and safety of children and adults placed in community care facilities. This bill specifies that granting a simplified criminal record exemption does not relieve the person from complying with other applicable screening provisions, such as being fingerprinted.

The changes this bill makes to the simplified criminal record exemption process would apply to individuals seeking to operate, be employed by, or otherwise have contact with clients in community care facilities or those applying to be listed on the Home Care Aide Registry, but would not apply to individuals applying to operate a foster family home, certified family home, or be a resource family, as provided.

In addition, this bill removes the requirement that individuals seeking a license to operate, be employed by, or otherwise have contact with clients in a community care facility, or individuals applying to be registered home care aides, sign a declaration under penalty of perjury regarding any prior criminal convictions. This bill prohibits CDSS from requiring these individuals to

³ *Id.*

disclose their criminal history information, but does not affect requirements that these individuals be fingerprinted as part of the background check process.

7. Argument in Support

The sponsor of this bill the East Bay Community Law Center states:

In the Clean Slate Practice at EBCLC, we serve people who are formerly incarcerated and help remove barriers to re-entry. Clean Slate works on criminal record remedies, fines and fees advocacy, traffic issues, and employment advocacy including background check advocacy and occupational licensing. Through our work in employment advocacy over the years, we have seen first-hand the struggle to get a timely exemption through DSS if the person has a criminal record. We've also seen how this process has disproportionately impacted women of color. EBCLC analyzed its data over a two year period and found that 55.5% of our clients seeking an exemption were African-America women specifically.

CDSS regulates Home Care Aides and employees and volunteers who provide direct care services in community care, residential care, and child care facilities. 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. 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.

AB 1720 will streamline the licensure process for those who have minor and old convictions to ensure that an unrelated prior conviction does not prohibit a qualified, rehabilitated person from securing employment. This bill requires CDSS to grant a simplified criminal record exemption if the individual meets strict conviction requirements and is not a safety risk according to CDSS standards. This bill also prohibits CDSS from requiring applicants to disclose information regarding their criminal history as part of the application process because CDSS already receives a complete conviction history as part of the background check process.

8. Argument in Opposition

The California Assisted Living Association opposes this bill unless it is amended stating:

CALA appreciates Assemblymember Holden's leadership in improving the background check system for Community Care Licensed facilities to help expand employment opportunities and get people to work faster. Unfortunately, AB 1720 as it is proposed to be amended creates unnecessary barriers that will slow down the hiring process and greatly hinder RCFEs being able to hire qualified individuals in a timely manner.