
THIRD READING

Bill No: AB 1720
Author: Holden (D)
Amended: 8/22/22 in Senate
Vote: 21

SENATE HUMAN SERVICES COMMITTEE: 3-1, 6/20/22
AYES: Hurtado, Cortese, Pan
NOES: Jones
NO VOTE RECORDED: Kamlager

SENATE PUBLIC SAFETY COMMITTEE: 5-0, 6/28/22
AYES: Bradford, Ochoa Bogh, Kamlager, Skinner, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 50-17, 5/26/22 - See last page for vote

SUBJECT: Care facilities: criminal background checks

SOURCE: East Bay Community Law Center

DIGEST: This bill authorizes the California Department of Social Services (CDSS) to process a simplified criminal record exemption for an individual 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, if that individual meets specified criteria. This bill removes the requirement that an individual sign a declaration under penalty of perjury regarding any prior criminal convictions and prohibits CDSS from requiring an individual to disclose their criminal history information prior to the receipt of live scan results.

Senate Floor Amendments of 8/22/22 incorporate changes to Sections 1522, 1568.09, 1569.17, 1596.871, and 1796.24 of the Health and Safety Code proposed by SB 1093 (Hurtado) to resolve conflicts.

ANALYSIS:

Existing law:

- 1) 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. (HSC §1500 et seq.)
- 2) 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, residential care facility for persons with chronic life-threatening illness, residential care facility for the elderly, or child day care facility, as specified. (HSC §1522 et seq.; HSC §1568.09 et seq.; HSC §1569.17 et seq.; HSC §1596.871 et seq.)
- 3) 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))
- 4) 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))
- 5) 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 as the result of an application for licensing, employment, certification, or approval, as provided. (Penal Code §11105.2(a))
- 6) Requires DOJ to notify CDSS within 14 calendar days of a person's criminal record information and, if no criminal information has been recorded, provide a statement of that fact. (HSC §1522(c)(2))

This bill:

- 1) Removes the requirement that an individual seeking a license to operate, be employed by, or otherwise have contact with clients in a community care facility, including a residential care facility for persons with chronic, life-threatening illness, a residential care facility for the elderly, or a child daycare facility, sign a declaration under penalty of perjury regarding any prior criminal convictions. Retains the requirement an individual 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.

- 2) 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.
- 3) Prohibits CDSS from requiring an individual described in 1) and 2), above, to disclose their criminal history information prior to the receipt of live scan results.
- 4) Allows CDSS to process a simplified criminal record exemption for an individual described in 1) and 2), above, excluding an individual applying to operate a foster family home, certified family home, or be a resource family, as provided, if the individual meets all of the following criteria:
 - a) The individual has not been convicted of a violent crime.
 - 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 within the last 10 years.
 - d) The individual has five or fewer misdemeanor convictions.
 - e) The individual has no more than one felony conviction.
 - f) The individual has not been convicted of a crime for which CDSS is prohibited from granting an exemption.
- 5) Allows CDSS to require, in its discretion, an individual who is otherwise eligible for a simplified exemption described in 4), above, to complete the standard exemption process if CDSS determines that doing so will protect the health and safety of any person who is a client of a community care facility.
- 6) States that a simplified criminal record exemption does not relieve the person from compliance with other applicable background check provisions.
- 7) Makes other technical and conforming changes.

Background

Community Care Licensing Division (CCLD). CDSS's CCLD licenses and oversees community care facilities—including child care facilities 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, 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.

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 maintaining 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.

Criminal Background Checks. To protect the vulnerable populations served by CCLD-licensed facilities, 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 background check. These background checks are conducted by DOJ and used to determine whether individuals should be allowed to be present in a licensed facility. 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.

Criminal Record 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.

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 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.

Standard and simplified exemption process. Regulations (22 CCR 80019.1) establish criteria for CDSS to grant a criminal record exemption using either a standard exemption process or a simplified exemption process. 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.

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:

- 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.

Comments

Purpose of this bill. According to the author, "the Department of Social Services (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/Prior Legislation

AB 1608 (Holden, 2019) 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 certain data related to criminal record clearance and exemption approvals and denials on its website, 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 not heard by the Senate Human Services Committee.

AB 3039 (Holden, 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 in the Assembly Appropriations Committee.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 8/23/22)

East Bay Community Law Center (source)
A New Way of Life Reentry Project
Alameda County Public Defender's Office
Alliance for Boys and Men of Color
California Public Defenders Association
Californians for Safety and Justice
Community Legal Services in East Palo Alto
East Bay Community Law Center
East Bay Family Defenders
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Hillsides
Initiate Justice
Legal Aid at Work
Legal Services for Prisoner with Children

Mental Health Advocacy Services
National Association of Social Workers, California Chapter
National Employment Law Project
Pillars of the Community
Roberts Enterprise Development Fund
Root and Rebound
Rubicon Programs
Sister Warriors Freedom Coalition
Starting Over, Inc.

OPPOSITION: (Verified 8/23/22)

None received

ASSEMBLY FLOOR: 50-17, 5/26/22

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bloom, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Cooley, Daly, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Jones-Sawyer, Kalra, Lee, Levine, Low, Mayes, McCarty, Medina, Mullin, Nazarian, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Blanca Rubio, Santiago, Stone, Ting, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NOES: Bigelow, Chen, Choi, Cooper, Cunningham, Megan Dahle, Flora, Fong, Gallagher, Irwin, Kiley, Mathis, Nguyen, Petrie-Norris, Seyarto, Smith, Valladares

NO VOTE RECORDED: Berman, Boerner Horvath, Davies, Lackey, Maienschein, Muratsuchi, O'Donnell, Patterson, Rodriguez, Salas, Voepel

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