

AMENDED IN ASSEMBLY JUNE 20, 2002

AMENDED IN SENATE APRIL 17, 2002

SENATE BILL

No. 1804

Introduced by Senator Escutia

February 22, 2002

An act to amend ~~Sections 1265.5 and 1569.17~~ *Section 1265.5* of the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1804, as amended, Escutia. Residential care facilities for the elderly: criminal record checks.

Existing law requires the State Department of Health Services to secure a criminal record check prior to the initial licensure or renewal of a license of ~~persons~~ *any person* to operate or manage an intermediate care facility/developmentally disabled habilitative, an intermediate care facility/developmentally disabled-nursing, or an intermediate care facility/developmentally disabled, other than an intermediate care facility/developmentally disabled operated by the state that secures criminal record clearances for its employees through another method or upon hiring any direct care staff. *Under existing law, the violation by any person of these provisions, or the willful or repeated violation of any regulation adopted under these provisions, is a misdemeanor.*

This bill would, *instead*, apply this criminal check requirement to an intermediate care facility/developmentally disabled habilitative, an intermediate care facility/developmentally disabled-nursing, an intermediate care facility/developmentally disabled, a skilled nursing facility, or any other intermediate care facility; other than a facility *operated by the state* that secures criminal record clearances for its

employees through another method ~~and~~ or upon hiring any direct care staff.

Existing law defines direct care staff to include all facility staff who are trained and experienced in the care of persons with developmental disabilities and who directly provide program and nursing services to clients.

This bill would revise the definition of direct care staff to include all facility staff who are trained and experienced in the care of persons with developmental disabilities and all other persons who have direct contact with clients whether employed either directly or through a vendor, contractor, or ~~3rd party~~ 3rd party.

This bill would exempt specified individuals from these criminal record clearance requirements. This bill would also provide that it is unlawful for an employer to deduct from the wages earned by an employee, or require an employee to pay, the fees associated with this background clearance. This bill would make related and conforming changes.

By changing the definition of an existing crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides for the licensure of persons to operate residential care facilities for the elderly by the State Department of Social Services. Existing law requires the department, before issuing a license to any person to operate or manage a residential care facility for the elderly, to secure from an appropriate law enforcement agency criminal records to determine whether the applicant and other persons, as specified, have ever been convicted of a crime other than a minor traffic violation or been arrested for certain offenses.~~

~~Existing law requires the department to deny an application, unless an exemption is granted, if it is found that the applicant or any of the other designated persons has been convicted of or arrested for prescribed crimes. Existing law, as part of the criminal records check procedure, provides that if no criminal record information has been recorded, the Department of Justice is required to provide the applicant~~



and the State Department of Social Services with a statement of that fact.

This bill would delete the requirement that the Department of Justice inform the applicant.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. *The Legislature hereby finds and declares the*
2 *following:*

3 *The purpose of this act is to add to the list of persons required*
4 *to submit to background checks prior to employment in specified*
5 *care facilities and to add to the list of facilities requiring*
6 *background checks. It is not the purpose of the act to review the*
7 *existing criteria for excluding persons from employment based on*
8 *these background checks. Accordingly, this act is not intended to*
9 *foreclose future review of the exclusion criteria, as set forth in*
10 *subdivisions (c) and (d) of Section 1265.5 of the Health and Safety*
11 *Code.*

12 SEC. 2. Section 1265.5 of the Health and Safety Code is
13 amended to read:

14 1265.5. (a) (1) Prior to the initial licensure or renewal of a
15 license of any person or persons to operate or manage an
16 intermediate care facility/developmentally disabled habilitative,
17 an intermediate care facility/developmentally disabled-nursing,
18 an intermediate care facility/developmentally disabled, a skilled
19 nursing facility, or any other intermediate care facility other than
20 a facility operated by the state that secures criminal record
21 clearances for its employees through a method other than as
22 specified in this section, or upon the hiring of direct care staff by
23 any of these facilities, the state department shall secure from an
24 appropriate law enforcement agency a criminal record to
25 determine whether the applicant, facility administrator or
26 manager, any direct care staff, any other adult living in the same
27 location, or any ~~individual newly employed~~ *facility worker newly*
28 *employed at a facility* either directly or through a vendor,
29 contractor, or ~~third party~~ *third party*, has ever been convicted of a
30 crime other than a minor traffic violation.



1 (2) *The following persons are exempt from the requirements of*
2 *paragraph (1):*

3 (A) *A third-party contractor retained by the facility if the*
4 *contractor is not left alone with clients in care.*

5 (B) *A third-party contractor or other business professional*
6 *retained by a client and at the facility at the request or by*
7 *permission of that client. These individuals may not be left alone*
8 *with other clients.*

9 (C) *Any person similar to those described in subparagraphs*
10 *(A) and (B), as defined by the department in regulations.*

11 (D) *Any person who has undergone a background check as part*
12 *of his or her professional licensing or certification process.*

13 (3) *Nothing in paragraph (2) shall prevent a licensee from*
14 *requiring a criminal record clearance of any individual exempt*
15 *from the requirements of this section if that individual has client*
16 *contact.*

17 (b) (1) *The application for licensure or renewal shall be denied*
18 *if the criminal record indicates that the person seeking initial*
19 *licensure or renewal of a license referred to in subdivision (a) has*
20 *been convicted of a violation or attempted violation of any one or*
21 *more of the following Penal Code provisions: Section 187,*
22 *subdivision (a) of Section 192, Section 203, 205, 206, 207, 209,*
23 *210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1, Sections*
24 *265 to 267, inclusive, Section 273a, 273d, 273.5, or 285,*
25 *subdivisions (c), (d), (f), and (g) of Section 286, Section 288,*
26 *subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5,*
27 *289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d*
28 *to 484j, inclusive, or Section 487, 488, 496, 503, 518, or 666,*
29 *unless any of the following applies:*

30 (A) *The person was convicted of a felony and has obtained a*
31 *certificate of rehabilitation under Chapter 3.5 (commencing with*
32 *Section 4852.01) of Title 6 of Part 3 of the Penal Code and the*
33 *information or accusation against the person has been dismissed*
34 *pursuant to Section 1203.4 of the Penal Code with regard to that*
35 *felony.*

36 (B) *The person was convicted of a misdemeanor and the*
37 *information or accusation against the person has been dismissed*
38 *pursuant to Section 1203.4 or 1203.4a of the Penal Code.*

39 (C) *The person was convicted of a felony or a misdemeanor,*
40 *but has previously disclosed the fact of each conviction to the*



1 department and the department has made a determination in
2 accordance with law that the conviction does not disqualify the
3 person.

4 (D) The person was convicted of a misdemeanor violation of
5 Section 488 or 496 of the *Penal Code* and has had no subsequent
6 conviction of either offense in the last five years. ~~This paragraph
7 shall become inoperative on August 1, 2001.~~

8 (2) The application for licensure or renewal shall be denied if
9 the criminal record of the person includes a conviction in another
10 state for an offense that, if committed or attempted in this state,
11 would have been punishable as one or more of the offenses set
12 forth in paragraph (1), unless evidence of rehabilitation
13 comparable to the dismissal of a misdemeanor or a certificate of
14 rehabilitation as set forth in subparagraph (A) or (B) of paragraph
15 (1) is provided to the department.

16 (c) (1) If the criminal record of a person described in
17 subdivision (a) indicates any conviction other than a minor traffic
18 violation or other than a conviction listed in subdivision (b), the
19 department may deny the application for licensure or renewal. In
20 determining whether or not to deny the application for licensure
21 or renewal pursuant to this subdivision, the department shall take
22 into consideration the following factors as evidence of good
23 character and rehabilitation:

24 ~~(1)~~

25 (A) The nature and seriousness of the offense under
26 consideration and its relationship to their employment duties and
27 responsibilities.

28 ~~(2)~~

29 (B) Activities since conviction, including employment or
30 participation in therapy or education, that would indicate changed
31 behavior.

32 ~~(3)~~

33 (C) The time that has elapsed since the commission of the
34 conduct or offense referred to in paragraph (1) or (2) and the
35 number of offenses.

36 ~~(4)~~

37 (D) The extent to which the person has complied with any
38 terms of parole, probation, restitution, or any other sanction
39 lawfully imposed against the person.

40 ~~(5)~~



1 (E) Any rehabilitation evidence, including character
2 references, submitted by the person.

3 ~~(6)~~

4 (F) Employment history and current employer
5 recommendations.

6 ~~(7)~~

7 (G) Circumstances surrounding the commission of the offense
8 that would demonstrate the unlikelihood of repetition.

9 ~~(8)~~

10 (H) The granting by the Governor of a full and unconditional
11 pardon.

12 ~~(9)~~

13 (I) A certificate of rehabilitation from a superior court.

14 (2) *The department shall promulgate regulations to implement*
15 *this subdivision.*

16 (d) Nothing in this section shall be construed to require a
17 criminal record check of a person receiving services in an
18 intermediate care facility/developmentally disabled habilitative,
19 intermediate care facility/developmentally disabled-nursing,
20 intermediate care facility/developmentally disabled, or any other
21 intermediate care facility, or a skilled nursing facility.

22 (e) For purposes of this section, “direct care staff” includes all
23 facility staff who are trained and experienced in the care of persons
24 with developmental disabilities and all other persons who have
25 direct contact with clients whether employed either directly or
26 through a vendor, contractor, or ~~third-party~~ *third party*.
27 Administrative and licensed personnel shall be considered direct
28 care staff when directly providing program and nursing services
29 to clients. Persons employed as consultants and acting as direct
30 care staff shall be subject to the same requirements for a criminal
31 record clearance as other direct care staff. However, the employing
32 facility shall not be required to pay any costs associated with that
33 criminal record clearance, with the exception of submissions for
34 ~~individuals~~ *facility workers* newly employed either directly or
35 through a vendor, contractor, or ~~third-party~~ *third party*, at a skilled
36 nursing facility or at an intermediate care facility, an intermediate
37 care facility/developmentally disabled habilitative, an
38 intermediate care facility/developmentally disabled-nursing, or an
39 intermediate care facility/developmentally disabled.



1 (f) *As used in this section, “facility worker” means any*
2 *individual, other than a volunteer, who has direct access to a*
3 *patient of a facility under an employment or other contract, or*
4 *both, with the facility.*

5 (g) Upon the employment of any person specified in
6 subdivision (a), and prior to any contact with clients or residents,
7 the facility shall submit fingerprint cards to the department for the
8 purpose of obtaining a criminal record check clearance.

9 ~~(g)~~

10 (h) The department shall develop procedures to ensure that any
11 licensee, direct care staff, or certificate holder for whom a criminal
12 record has been obtained pursuant to this section, ~~Sections~~ Section
13 1338.5 or 1736, or as part of the licensing and certification process,
14 shall not be required to obtain multiple criminal record clearances.

15 (i) *It shall be unlawful for an employer to deduct from the*
16 *wages earned by an employee, or to require an employee to pay,*
17 *the fees associated with obtaining any background investigation*
18 *and clearance required by this section.*

19 SEC. 3. *No reimbursement is required by this act pursuant to*
20 *Section 6 of Article XIII B of the California Constitution because*
21 *the only costs that may be incurred by a local agency or school*
22 *district will be incurred because this act creates a new crime or*
23 *infraction, eliminates a crime or infraction, or changes the penalty*
24 *for a crime or infraction, within the meaning of Section 17556 of*
25 *the Government Code, or changes the definition of a crime within*
26 *the meaning of Section 6 of Article XIII B of the California*
27 *Constitution.*

28 ~~SEC. 2. Section 1569.17 of the Health and Safety Code is~~
29 ~~amended to read:~~

30 ~~1569.17. (a) The Legislature recognizes the need to generate~~
31 ~~timely and accurate positive fingerprint identification of~~
32 ~~applicants as a condition of issuing licenses, permits, or~~
33 ~~certificates of approval for persons to operate or provide direct~~
34 ~~care services in a residential care facility for the elderly. The~~
35 ~~Legislature supports the use of the fingerprint live-scan~~
36 ~~technology, as identified in the long-range plan of the Department~~
37 ~~of Justice for fully automating the processing of fingerprints and~~
38 ~~other data by the year 1999. It is the intent of the Legislature in~~
39 ~~enacting this section to require the fingerprints of those individuals~~



1 ~~whose contact with clients of residential care facilities for the~~
2 ~~elderly may pose a risk to the clients' health and safety.~~

3 ~~(b) (1) Before issuing a license to a person to operate or~~
4 ~~manage a residential care facility for the elderly, the department~~
5 ~~shall secure from an appropriate law enforcement agency a~~
6 ~~criminal record to determine whether the applicant or any other~~
7 ~~person specified in paragraph (1) of subdivision (c) has ever been~~
8 ~~convicted of a crime other than a minor traffic violation or arrested~~
9 ~~for any crime specified in Section 290 of the Penal Code, for~~
10 ~~violating Section 245 or 273.5, subdivision (b) of Section 273a or,~~
11 ~~prior to January 1, 1994, paragraph (2) of Section 273a, of the~~
12 ~~Penal Code, or for any crime for which the department cannot~~
13 ~~grant an exemption if the person was convicted and the person has~~
14 ~~not been exonerated.~~

15 ~~(2) The criminal history information shall include the full~~
16 ~~criminal record, if any, of those persons, and subsequent arrest~~
17 ~~information pursuant to Section 11105.2 of the Penal Code.~~

18 ~~(3) The following shall apply to the criminal record~~
19 ~~information:~~

20 ~~(A) If the department finds that the applicant or any other~~
21 ~~person specified in paragraph (1) of subdivision (c) has been~~
22 ~~convicted of a crime, other than a minor traffic violation, the~~
23 ~~application shall be denied, unless the director grants an~~
24 ~~exemption pursuant to subdivision (g).~~

25 ~~(B) If the department finds that the applicant or any other~~
26 ~~person specified in paragraph (1) of subdivision (c) is awaiting~~
27 ~~trial for a crime other than a minor traffic violation, the department~~
28 ~~may cease processing the application until the conclusion of the~~
29 ~~trial.~~

30 ~~(C) If no criminal record information has been recorded, the~~
31 ~~Department of Justice shall provide the department with a~~
32 ~~statement of that fact.~~

33 ~~(D) If the department finds after licensure that the licensee, or~~
34 ~~any other person specified in paragraph (1) of subdivision (c), has~~
35 ~~been convicted of a crime other than a minor traffic violation, the~~
36 ~~license may be revoked unless the director grants an exemption~~
37 ~~pursuant to subdivision (g).~~

38 ~~(E) An applicant and any other person specified in paragraph~~
39 ~~(1) of subdivision (c) shall submit a second set of fingerprints to~~
40 ~~the Department of Justice for the purpose of searching the records~~



1 of the Federal Bureau of Investigation, in addition to the search
2 required by subdivision (b). If an applicant meets all other
3 conditions for licensure, except receipt of the Federal Bureau of
4 Investigation's criminal history information for the applicant and
5 persons listed in paragraph (1) of subdivision (e), the department
6 may issue a license if the applicant and each person described by
7 paragraph (1) of subdivision (e) has signed and submitted a
8 statement that he or she has never been convicted of a crime in the
9 United States, other than a traffic infraction as defined in
10 paragraph (1) of subdivision (a) of Section 42001 of the Vehicle
11 Code. If, after licensure, the department determines that the
12 licensee or person specified in paragraph (1) of subdivision (e) has
13 a criminal record, the license may be revoked pursuant to Section
14 1569.50 and the department may also suspend the license pending
15 an administrative hearing pursuant to Sections 1569.50 and
16 1569.51.

17 (e) In addition to the applicant, this section shall apply to
18 criminal convictions of the following persons:

19 (1) (A) Any adult responsible for administration or direct
20 supervision of staff.

21 (B) Any person, other than a client, residing in the facility. A
22 resident of an unlicensed independent senior housing facility that
23 is located in a building contiguous to, and on the same property as,
24 a residential care facility for the elderly shall be exempt from these
25 requirements.

26 (C) Any person who provides client assistance in dressing,
27 grooming, bathing, or personal hygiene. Any nurse assistant or
28 home health aide meeting the requirements of Section 1338.5 or
29 1736.6, respectively, who is not employed, retained, or contracted
30 by the licensee, and who has been certified or recertified on or after
31 July 1, 1998, shall be deemed to meet the criminal record clearance
32 requirements of this section. A certified nurse assistant and
33 certified home health aide who will be providing client assistance
34 and who falls under this exemption shall provide one copy of his
35 or her current certification, prior to providing care, to the
36 residential care facility for the elderly. The facility shall maintain
37 the copy of the certification on file as long as the care is being
38 provided by the certified nurse assistant or certified home health
39 aide at the facility. Nothing in this paragraph restricts the right of
40 the department to exclude a certified nurse assistant or certified



1 ~~home health aide from a licensed residential care facility for the~~
2 ~~elderly pursuant to Section 1569.58.~~

3 ~~(D) Any staff person, volunteer, or employee who has contact~~
4 ~~with the clients.~~

5 ~~(E) If the applicant is a firm, partnership, association, or~~
6 ~~corporation, the chief executive officer or other person serving in~~
7 ~~a similar capacity.~~

8 ~~(F) Additional officers of the governing body of the applicant~~
9 ~~or other persons with a financial interest in the applicant, as~~
10 ~~determined necessary by the department by regulation. The~~
11 ~~criteria used in the development of these regulations shall be based~~
12 ~~on the person's capability to exercise substantial influence over the~~
13 ~~operation of the facility.~~

14 ~~(2) The following persons are exempt from requirements~~
15 ~~applicable under paragraph (1):~~

16 ~~(A) A spouse, relative, significant other, or close friend of a~~
17 ~~client shall be exempt if this person is visiting the client or provides~~
18 ~~direct care and supervision to that client only.~~

19 ~~(B) A volunteer to whom all of the following apply:~~

20 ~~(i) The volunteer is at the facility during normal waking hours.~~

21 ~~(ii) The volunteer is directly supervised by the licensee or a~~
22 ~~facility employee with a criminal record clearance or exemption.~~

23 ~~(iii) The volunteer spends no more than 16 hours per week at~~
24 ~~the facility.~~

25 ~~(iv) The volunteer does not provide any client with assistance~~
26 ~~in dressing, grooming, bathing, or personal hygiene.~~

27 ~~(v) The volunteer is not left alone with any client in the care of~~
28 ~~the facility.~~

29 ~~(C) A third-party contractor retained by the facility if the~~
30 ~~contractor is not left alone with any client in the care of the facility.~~

31 ~~(D) A third-party contractor or other business professional~~
32 ~~retained by a client and at the facility at the request or by~~
33 ~~permission of that client. These individuals shall not be left alone~~
34 ~~with other clients.~~

35 ~~(E) Any licensed or certified medical professional. This~~
36 ~~exemption shall not apply to a person who is a community care~~
37 ~~facility licensee or an employee of the facility.~~

38 ~~(F) Any employee of a licensed home health agency and any~~
39 ~~member of a licensed hospice interdisciplinary team who has~~
40 ~~contact with a resident of a residential care facility at the request~~



1 of the resident or resident's legal decisionmaker. This exemption
2 shall not apply to a person who is a community care facility
3 licensee or an employee of the facility.

4 (G) Any clergy or other spiritual caregiver who is performing
5 services in any common area of the residential care facility, or who
6 is advising an individual resident at the request of, or with
7 permission of, the resident. This exemption shall not apply to a
8 person who is a community care facility licensee or an employee
9 of the facility.

10 (H) Any person similar to those described in this subdivision,
11 as defined by the department in regulations.

12 (I) Nothing in this paragraph shall prevent a licensee from
13 requiring a criminal record clearance of any person exempt from
14 the requirements of this section, provided that the person has client
15 contact.

16 (d) (1) (A) Subsequent to initial licensure, any person
17 required to be fingerprinted pursuant to subdivision (c) shall, as a
18 condition to employment, residence, or presence in a residential
19 facility for the elderly, be fingerprinted and sign a declaration
20 under penalty of perjury regarding any prior criminal convictions.
21 The licensee shall submit these fingerprints, along with a second
22 set of fingerprints for the purpose of searching the records of the
23 Federal Bureau of Investigation, to the Department of Justice, or
24 shall comply with paragraph (1) of subdivision (h), prior to the
25 person's employment, residence, or initial presence in the
26 residential care facility for the elderly.

27 (B) These fingerprints shall be on a fingerprint card provided
28 by the department, or sent by electronic transmission in a manner
29 approved by the department and the Department of Justice and
30 submitted to the Department of Justice by the licensee. A
31 licensee's failure to submit fingerprints to the Department of
32 Justice or to comply with paragraph (1) of subdivision (h) as
33 required in this section, shall result in the citation of a deficiency
34 and an immediate assessment of civil penalties in the amount of
35 one hundred dollars (\$100) per violation. The department may
36 assess civil penalties for continued violations as permitted by
37 Section 1569.49. The licensee shall then submit these fingerprints
38 to the department for processing. Documentation of the
39 individual's clearance or exemption shall be maintained by the
40 licensee and be available for inspection. When live scan



1 ~~technology is operational, as defined in Section 1522.04, the~~
2 ~~Department of Justice shall notify the department, as required by~~
3 ~~that section, and notify the licensee by mail within 14 days of~~
4 ~~electronic transmission of the fingerprints to the Department of~~
5 ~~Justice, if the person has no criminal record. A violation of the~~
6 ~~regulations adopted pursuant to Section 1522.04 shall result in the~~
7 ~~citation of a deficiency and an immediate assessment of civil~~
8 ~~penalties in the amount of one hundred dollars (\$100) per~~
9 ~~violation. The department may assess civil penalties for continued~~
10 ~~violations as permitted by Section 1569.49.~~

11 ~~(2) Within 14 calendar days of the receipt of the fingerprints,~~
12 ~~the Department of Justice shall notify the department of the~~
13 ~~criminal record information, as provided for in this subdivision. If~~
14 ~~no criminal record information has been recorded, the Department~~
15 ~~of Justice shall provide the licensee and the department with a~~
16 ~~statement of that fact within 14 calendar days of receipt of the~~
17 ~~fingerprints. If new fingerprints are required for processing, the~~
18 ~~Department of Justice shall, within 14 calendar days from the date~~
19 ~~of receipt of the fingerprints, notify the licensee that the~~
20 ~~fingerprints were illegible.~~

21 ~~(3) Except for persons specified in paragraph (2) of subdivision~~
22 ~~(e), the licensee shall endeavor to ascertain the previous~~
23 ~~employment history of any person required to be fingerprinted~~
24 ~~under this subdivision.~~

25 ~~(4) If the department determines, on the basis of the~~
26 ~~fingerprints submitted to the Department of Justice, that the person~~
27 ~~has been convicted of a sex offense against a minor, an offense~~
28 ~~specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal~~
29 ~~Code, or a felony, the department shall notify the licensee in~~
30 ~~writing, within 15 calendar days of the receipt of the notification~~
31 ~~from the Department of Justice, to act immediately to terminate the~~
32 ~~person's employment, remove the person from the residential care~~
33 ~~facility for the elderly, or bar the person from entering the~~
34 ~~residential care facility for the elderly. The department may~~
35 ~~subsequently grant an exemption pursuant to subdivision (g). If the~~
36 ~~conviction was for another crime, except a minor traffic violation,~~
37 ~~the licensee shall, upon notification by the department, act~~
38 ~~immediately to either (1) terminate the person's employment,~~
39 ~~remove the person from the residential care facility for the elderly,~~
40 ~~or bar the person from entering the residential care facility for the~~



1 elderly, or (2) seek an exemption pursuant to subdivision (g). The
2 department shall determine if the person may be allowed to remain
3 in the facility until a decision on the exemption is rendered by the
4 department. A licensee's failure to comply with the department's
5 prohibition of employment, contact with clients, or presence in the
6 facility as required by this paragraph shall be grounds for
7 disciplining the licensee pursuant to Section 1569.50.

8 (5) The department may issue an exemption on its own motion
9 pursuant to subdivision (g) if the person's criminal history
10 indicates that the person is of good character based on the age,
11 seriousness, and frequency of the conviction or convictions. The
12 department, in consultation with interested parties, shall develop
13 regulations to establish the criteria to grant an exemption pursuant
14 to this paragraph.

15 (6) Concurrently with notifying the licensee pursuant to
16 paragraph (4), the department shall notify the affected person of
17 his or her right to seek an exemption pursuant to subdivision (g).
18 The person may seek an exemption only if the licensee terminates
19 the person's employment or removes the person from the facility
20 after receiving notice from the department pursuant to paragraph
21 (4).

22 (e) (1) For purposes of this section or any other provision of
23 this chapter, a conviction means a plea or verdict of guilt or a
24 conviction following a plea of nolo contendere. Any action the
25 department is permitted to take following the establishment of a
26 conviction may be taken when the time for appeal of the conviction
27 has elapsed, when the judgment of conviction has been affirmed
28 on appeal, or when an order granting probation is made suspending
29 the imposition of the sentence, notwithstanding a subsequent order
30 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
31 permitting a person to withdraw his or her plea of guilty and to
32 enter a plea of not guilty, or setting aside the verdict of guilt, or
33 dismissing the accusation, information, or indictment. For
34 purposes of this section or any other provision of this chapter, the
35 record of a conviction, or a copy thereof certified by the clerk of
36 the court or by a judge of the court in which the conviction
37 occurred, shall be conclusive evidence of the conviction. For
38 purposes of this section or any other provision of this chapter, the
39 arrest disposition report certified by the Department of Justice or
40 documents admissible in a criminal action pursuant to Section



1 ~~969b of the Penal Code shall be prima facie evidence of the~~
2 ~~conviction, notwithstanding any other provision of law~~
3 ~~prohibiting the admission of these documents in a civil or~~
4 ~~administrative action.~~

5 ~~(2) For purposes of this section or any other provision of this~~
6 ~~chapter, the department shall consider any criminal conviction~~
7 ~~from another state or federal court as if the criminal offense was~~
8 ~~committed in this state.~~

9 ~~(f) The department shall not use a record of arrest to deny,~~
10 ~~revoke, or terminate any application, license, employment, or~~
11 ~~residencee unless the department investigates the incident and~~
12 ~~secures evidence, whether or not related to the incident of arrest,~~
13 ~~that is admissible in an administrative hearing to establish conduct~~
14 ~~by the person that may pose a risk to the health and safety of any~~
15 ~~person who is or may become a client. The department may obtain~~
16 ~~any arrest or conviction records or reports from any law~~
17 ~~enforcement agency as necessary to the performance of its duties~~
18 ~~to inspect, license, and investigate community care facilities and~~
19 ~~individuals associated with a community care facility.~~

20 ~~(g) (1) After review of the record, the director may grant an~~
21 ~~exemption from disqualification for a license as specified in~~
22 ~~subparagraph (A) or (D) of paragraph (3) of subdivision (b), or for~~
23 ~~employment, residence, or presence in a residential care facility~~
24 ~~for the elderly as specified in paragraph (4) of subdivision (d), if~~
25 ~~the director has substantial and convincing evidence to support a~~
26 ~~reasonable belief that the applicant and the person convicted of the~~
27 ~~crime, if other than the applicant, are of such good character as to~~
28 ~~justify the issuance of the license or special permit or the granting~~
29 ~~of an exemption for purposes of subdivision (d). However, no~~
30 ~~exemption shall be granted pursuant to this subdivision if the~~
31 ~~conviction was for any of the following offenses:~~

32 ~~(A) An offense specified in Section 220, 243.4, or 264.1,~~
33 ~~subdivision (a) of Section 273a or, prior to January 1, 1994,~~
34 ~~paragraph (1) of Section 273a, Section 273d, 288, or 289,~~
35 ~~subdivision (a) of Section 290, or Section 368, of the Penal Code,~~
36 ~~or was a conviction of another crime against a person specified in~~
37 ~~subdivision (e) of Section 667.5 of the Penal Code.~~

38 ~~(B) A felony offense specified in Section 729 of the Business~~
39 ~~and Professions Code, or Section 206 or 215, subdivision (a) of~~



1 ~~Section 347, subdivision (b) of Section 417, or subdivision (a) of~~
2 ~~Section 451, of the Penal Code.~~

3 ~~(2) The director shall notify in writing the licensee or the~~
4 ~~applicant of his or her decision within 60 days of receipt of all~~
5 ~~information from the applicant and other sources determined~~
6 ~~necessary by the director for the rendering of a decision pursuant~~
7 ~~to this subdivision.~~

8 ~~(3) The department shall not prohibit a person from being~~
9 ~~employed or having contact with clients in a facility on the basis~~
10 ~~of a denied criminal record exemption request or arrest~~
11 ~~information unless the department complies with the requirements~~
12 ~~of Section 1569.58.~~

13 ~~(h) (1) For purposes of compliance with this section, the~~
14 ~~department may permit a person to transfer a current criminal~~
15 ~~record clearance, as defined in subdivision (b), from one facility~~
16 ~~to another, as long as the criminal record clearance has been~~
17 ~~processed through a state licensing district office, and is being~~
18 ~~transferred to another facility licensed by a state licensing district~~
19 ~~office. The request shall be submitted in writing to the department,~~
20 ~~and shall include a copy of the person's driver's license or valid~~
21 ~~identification card issued by the Department of Motor Vehicles, or~~
22 ~~a valid photo identification issued by another state or the United~~
23 ~~States government if the person is not a California resident. Upon~~
24 ~~request of the licensee, who shall enclose a self-addressed stamped~~
25 ~~envelope for this purpose, the department shall verify whether the~~
26 ~~person has a clearance that can be transferred.~~

27 ~~(2) The department shall hold criminal record clearances in its~~
28 ~~active files for a minimum of two years after an employee is no~~
29 ~~longer employed at a licensed facility in order for the criminal~~
30 ~~record clearances to be transferred pursuant to this section.~~

31 ~~(i) If a licensee or facility is required by law to deny~~
32 ~~employment or to terminate employment of any employee based~~
33 ~~on written notification from the department that the employee has~~
34 ~~a prior criminal conviction or is determined unsuitable for~~
35 ~~employment under Section 1569.58, the licensee or facility shall~~
36 ~~not incur civil liability or unemployment insurance liability as a~~
37 ~~result of that denial or termination.~~

38 ~~(j) Amendments to the provisions of this section made in the~~
39 ~~1998 calendar year shall be implemented commencing 60 days~~
40 ~~after the effective date of the act amending this section in the 1998~~



1 ~~calendar year, except those provisions for the submission of~~
2 ~~fingerprints for searching the records of the Federal Bureau of~~
3 ~~Investigation, which shall be implemented commencing on~~
4 ~~January 1, 1999.~~

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