

ASSEMBLY BILL

No. 1913

Introduced by Assembly Member Cohn

February 9, 2004

An act to amend Section 1522 of the Health and Safety Code, and to repeal and amend Section 361.4 of the Welfare and Institutions Code, relating to foster care.

LEGISLATIVE COUNSEL'S DIGEST

AB 1913, as introduced, Cohn. Foster care providers: criminal records: exemption.

(1) Existing law regulates the licensure and operation by the State Department of Social Services of community care facilities, including foster family homes and certified family homes. Under existing law, before issuing a license, special permit, or certificate of approval to operate or manage a foster family home or certified family home, the department is required to determine whether the applicant or another designated person has been convicted of a crime that would preclude, among other things, issuance of the license, special permit, or certificate. In addition, existing law requires the applicant, among others, to submit a set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation.

Existing law authorizes the director, after review of the criminal record, to grant an exemption from disqualification for a license or special permit or certificate of approval, if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the

applicant, are of such good character as to justify issuance of the license or special permit.

This bill would provide that the record reviewed by the director for purposes of determining whether to grant an exemption, may be a criminal record obtained through the California Law Enforcement Telecommunications System (CLETS), for purposes of a temporary exemption, but that a final exemption decision is to be based on records obtained pursuant to the fingerprint clearance check.

(2) Existing law requires the county social worker to visit the home of a relative or prospective guardian who is not a licensed or certified foster parent, prior to placing the child in that home, to ascertain the appropriateness of the placement. Existing law also requires the court or county social worker to initiate a state and federal criminal records check through the California Law Enforcement Telecommunications System, and within 5 days after that to initiate a fingerprint clearance check of the person through the Department of Justice. Existing law requires the court and county social worker to consider the home of the person for placement of the child, if the fingerprint clearance check indicates that the person has no criminal record. Existing law provides until January 1, 2005 that the child shall not be placed in the home of the person if the fingerprint clearance check indicates that the person has been convicted of a crime that would preclude licensure as a community care facility, unless a criminal records exemption approved by the Director of Social Services has been granted by the county.

This bill would extend the exemption authority indefinitely. The bill would authorize the temporary placement of a child, based on the results of the criminal records check, but would require final placement decision to be based only on the fingerprint clearance check.

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

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

- 1 SECTION 1. Section 1522 of the Health and Safety Code is
- 2 amended to read:
- 3 1522. The Legislature recognizes the need to generate timely
- 4 and accurate positive fingerprint identification of applicants as a
- 5 condition of issuing licenses, permits, or certificates of approval
- 6 for persons to operate or provide direct care services in a
- 7 community care facility, foster family home, or a certified family



1 home of a licensed foster family agency. Therefore, the
2 Legislature supports the use of the fingerprint live-scan
3 technology, as identified in the long-range plan of the Department
4 of Justice for fully automating the processing of fingerprints and
5 other data by the year 1999, otherwise known as the California
6 Crime Information Intelligence System (CAL-CII), to be used for
7 applicant fingerprints. It is the intent of the Legislature in enacting
8 this section to require the fingerprints of those individuals whose
9 contact with community care clients may pose a risk to the clients'
10 health and safety.

11 (a) (1) Before issuing a license or special permit to any person
12 or persons to operate or manage a community care facility, the
13 State Department of Social Services shall secure from an
14 appropriate law enforcement agency a criminal record to
15 determine whether the applicant or any other person specified in
16 subdivision (b) has ever been convicted of a crime other than a
17 minor traffic violation or arrested for any crime specified in
18 Section 290 of the Penal Code, for violating Section 245 or 273.5,
19 subdivision (b) of Section 273a or, prior to January 1, 1994,
20 paragraph (2) of Section 273a of the Penal Code, or for any crime
21 for which the department cannot grant an exemption if the person
22 was convicted and the person has not been exonerated.

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

26 (3) Except during the 2003–04 fiscal year, no fee shall be
27 charged by the Department of Justice or the State Department of
28 Social Services for the fingerprinting of an applicant for a license
29 or special permit to operate a facility providing nonmedical board,
30 room, and care for six or less children or for obtaining a criminal
31 record of the applicant pursuant to this section.

32 (4) The following shall apply to the criminal record
33 information:

34 (A) If the State Department of Social Services finds that the
35 applicant, or any other person specified in subdivision (b), has
36 been convicted of a crime other than a minor traffic violation, the
37 application shall be denied, unless the director grants an
38 exemption pursuant to subdivision (g).

39 (B) If the State Department of Social Services finds that the
40 applicant, or any other person specified in subdivision (b) is



1 awaiting trial for a crime other than a minor traffic violation, the
2 State Department of Social Services may cease processing the
3 application until the conclusion of the trial.

4 (C) If no criminal record information has been recorded, the
5 Department of Justice shall provide the applicant and the State
6 Department of Social Services with a statement of that fact.

7 (D) If the State Department of Social Services finds after
8 licensure that the licensee, or any other person specified in
9 paragraph (2) of subdivision (b), has been convicted of a crime
10 other than a minor traffic violation, the license may be revoked,
11 unless the director grants an exemption pursuant to subdivision
12 (g).

13 (E) An applicant and any other person specified in subdivision
14 (b) shall submit a second set of fingerprints to the Department of
15 Justice for the purpose of searching the criminal records of the
16 Federal Bureau of Investigation, in addition to the criminal records
17 search required by this subdivision. If an applicant and all other
18 persons described in subdivision (b) meet all of the conditions for
19 licensure, except receipt of the Federal Bureau of Investigation's
20 criminal history information for the applicant or any of the persons
21 described in subdivision (b), the department may issue a license if
22 the applicant and each person described in subdivision (b) has
23 signed and submitted a statement that he or she has never been
24 convicted of a crime in the United States, other than a traffic
25 infraction, as defined in paragraph (1) of subdivision (a) of Section
26 42001 of the Vehicle Code. If, after licensure, the department
27 determines that the licensee or any other person specified in
28 subdivision (b) has a criminal record, the license may be revoked
29 pursuant to Section 1550. The department may also suspend the
30 license pending an administrative hearing pursuant to Section
31 1550.5.

32 (b) (1) In addition to the applicant, this section shall be
33 applicable to criminal convictions of the following persons:

34 (A) Adults responsible for administration or direct supervision
35 of staff.

36 (B) Any person, other than a client, residing in the facility.

37 (C) Any person who provides client assistance in dressing,
38 grooming, bathing, or personal hygiene. Any nurse assistant or
39 home health aide meeting the requirements of Section 1338.5 or
40 1736.6, respectively, who is not employed, retained, or contracted



1 by the licensee, and who has been certified or recertified on or after
2 July 1, 1998, shall be deemed to meet the criminal record clearance
3 requirements of this section. A certified nurse assistant and
4 certified home health aide who will be providing client assistance
5 and who falls under this exemption shall provide one copy of his
6 or her current certification, prior to providing care, to the
7 community care facility. The facility shall maintain the copy of the
8 certification on file as long as care is being provided by the
9 certified nurse assistant or certified home health aide at the facility.
10 Nothing in this paragraph restricts the right of the department to
11 exclude a certified nurse assistant or certified home health aide
12 from a licensed community care facility pursuant to Section 1558.

13 (D) Any staff person, volunteer, or employee who has contact
14 with the clients.

15 (E) If the applicant is a firm, partnership, association, or
16 corporation, the chief executive officer or other person serving in
17 like capacity.

18 (F) Additional officers of the governing body of the applicant,
19 or other persons with a financial interest in the applicant, as
20 determined necessary by the department by regulation. The
21 criteria used in the development of these regulations shall be based
22 on the person's capability to exercise substantial influence over the
23 operation of the facility.

24 (2) The following persons are exempt from the requirements
25 applicable under paragraph (1).

26 (A) A medical professional as defined in department
27 regulations who holds a valid license or certification from the
28 person's governing California medical care regulatory entity and
29 who is not employed, retained, or contracted by the licensee if all
30 of the following apply:

31 (i) The criminal record of the person has been cleared as a
32 condition of licensure or certification by the person's governing
33 California medical care regulatory entity.

34 (ii) The person is providing time-limited specialized clinical
35 care or services.

36 (iii) The person is providing care or services within the
37 person's scope of practice.

38 (iv) The person is not a community care facility licensee or an
39 employee of the facility.



- 1 (B) A third-party repair person or similar retained contractor if
- 2 all of the following apply:
 - 3 (i) The person is hired for a defined, time-limited job.
 - 4 (ii) The person is not left alone with clients.
 - 5 (iii) When clients are present in the room in which the
 - 6 repairperson or contractor is working, a staff person who has a
 - 7 criminal record clearance or exemption is also present.
- 8 (C) Employees of a licensed home health agency and other
- 9 members of licensed hospice interdisciplinary teams who have a
- 10 contract with a client or resident of the facility and are in the
- 11 facility at the request of that client or resident’s legal
- 12 decisionmaker. The exemption shall not apply to a person who is
- 13 a community care facility licensee or an employee of the facility.
- 14 (D) Clergy and other spiritual caregivers who are performing
- 15 services in common areas of the community care facility or who
- 16 are advising an individual client at the request of, or with the
- 17 permission of, the client or legal decisionmaker, are exempt from
- 18 fingerprint and criminal background check requirements imposed
- 19 by community care licensing. This exemption shall not apply to a
- 20 person who is a community care licensee or employee of the
- 21 facility.
- 22 (E) Members of fraternal, service, or similar organizations who
- 23 conduct group activities for clients if all of the following apply:
 - 24 (i) Members are not left alone with clients.
 - 25 (ii) Members do not transport clients off the facility premises.
 - 26 (iii) The same organization does not conduct group activities
 - 27 for clients more often than defined by the department’s
 - 28 regulations.
- 29 (3) In addition to the exemptions in paragraph (2), the
- 30 following persons in foster family homes, certified family homes,
- 31 and small family homes are exempt from the requirements
- 32 applicable under paragraph (1):
 - 33 (A) Adult friends and family of the licensee who come into the
 - 34 home to visit for a length of time no longer than defined by the
 - 35 department in regulations, provided that the adult friends and
 - 36 family of the licensee are not left alone with the foster children.
 - 37 (B) Parents of a foster child’s friends when the foster child is
 - 38 visiting the friend’s home and the friend, foster parent, or both are
 - 39 also present.



1 (4) In addition to the exemptions specified in paragraph (2), the
2 following persons in adult day care and adult day support centers
3 are exempt from the requirements applicable under paragraph (1):

4 (A) Unless contraindicated by the client's individualized
5 program plan (IPP) or needs and service plan, a spouse, significant
6 other, relative, or close friend of a client, or an attendant or a
7 facilitator for a client with a developmental disability if the
8 attendant or facilitator is not employed, retained, or contracted by
9 the licensee. This exemption applies only if the person is visiting
10 the client or providing direct care and supervision to the client.

11 (B) A volunteer if all of the following applies:

12 (i) The volunteer is supervised by the licensee or a facility
13 employee with a criminal record clearance or exemption.

14 (ii) The volunteer is never left alone with clients.

15 (iii) The volunteer does not provide any client assistance with
16 dressing, grooming, bathing, or personal hygiene other than
17 washing of hands.

18 (5) (A) In addition to the exemptions specified in paragraph
19 (2), the following persons in adult residential and social
20 rehabilitation facilities, unless contraindicated by the client's
21 individualized program plan (IPP) or needs and services plan, are
22 exempt from the requirements applicable under paragraph (1): a
23 spouse, significant other, relative, or close friend of a client, or an
24 attendant or a facilitator for a client with a developmental
25 disability if the attendant or facilitator is not employed, retained,
26 or contracted by the licensee. This exemption applies only if the
27 person is visiting the client or providing direct care and
28 supervision to that client.

29 (B) Nothing in this subdivision shall prevent a licensee from
30 requiring a criminal record clearance of any individual exempt
31 from the requirements of this section, provided that the individual
32 has client contact.

33 (6) Any person similar to those described in this subdivision,
34 as defined by the department in regulations.

35 (c) (1) Subsequent to initial licensure, any person specified in
36 subdivision (b) and not exempted from fingerprinting shall, as a
37 condition to employment, residence, or presence in a community
38 care facility, be fingerprinted and sign a declaration under penalty
39 of perjury regarding any prior criminal convictions. The licensee
40 shall submit these fingerprints to the Department of Justice, along



1 with a second set of fingerprints for the purpose of searching the
2 records of the Federal Bureau of Investigation, or to comply with
3 paragraph (1) of subdivision (h), prior to the person's
4 employment, residence, or initial presence in the community care
5 facility. These fingerprints shall be on a card provided by the State
6 Department of Social Services or sent by electronic transmission
7 in a manner approved by the State Department of Social Services
8 and the Department of Justice for the purpose of obtaining a
9 permanent set of fingerprints, and shall be submitted to the
10 Department of Justice by the licensee. A licensee's failure to
11 submit fingerprints to the Department of Justice or to comply with
12 paragraph (1) of subdivision (h), as required in this section, shall
13 result in the citation of a deficiency and the immediate assessment
14 of civil penalties in the amount of one hundred dollars (\$100) per
15 violation. The department may assess civil penalties for continued
16 violations as permitted by Section 1548. The fingerprints shall
17 then be submitted to the State Department of Social Services for
18 processing. Upon request of the licensee, who shall enclose a
19 self-addressed stamped postcard for this purpose, the Department
20 of Justice shall verify receipt of the fingerprints.

21 (2) Within 14 calendar days of the receipt of the fingerprints,
22 the Department of Justice shall notify the State Department of
23 Social Services of the criminal record information, as provided for
24 in subdivision (a). If no criminal record information has been
25 recorded, the Department of Justice shall provide the licensee and
26 the State Department of Social Services with a statement of that
27 fact within 14 calendar days of receipt of the fingerprints.
28 Documentation of the individual's clearance or exemption shall be
29 maintained by the licensee and be available for inspection. If new
30 fingerprints are required for processing, the Department of Justice
31 shall, within 14 calendar days from the date of receipt of the
32 fingerprints, notify the licensee that the fingerprints were illegible.
33 When live-scan technology is operational, as defined in Section
34 1522.04, the Department of Justice shall notify the State
35 Department of Social Services, as required by that section, and
36 shall also notify the licensee by mail, within 14 days of electronic
37 transmission of the fingerprints to the Department of Justice, if the
38 person has no criminal history recorded. A violation of the
39 regulations adopted pursuant to Section 1522.04 shall result in the
40 citation of a deficiency and an immediate assessment of civil



1 penalties in the amount of one hundred dollars (\$100) per
2 violation. The department may assess civil penalties for continued
3 violations as permitted by Section 1548.

4 (3) Except for persons specified in paragraph (2) of subdivision
5 (b), the licensee shall endeavor to ascertain the previous
6 employment history of persons required to be fingerprinted under
7 this subdivision. If it is determined by the State Department of
8 Social Services, on the basis of the fingerprints submitted to the
9 Department of Justice, that the person has been convicted of, or is
10 awaiting trial for, a sex offense against a minor, or has been
11 convicted for an offense specified in Section 243.4, 273a, 273d,
12 273g, or 368 of the Penal Code, or a felony, the State Department
13 of Social Services shall notify the licensee to act immediately to
14 terminate the person's employment, remove the person from the
15 community care facility, or bar the person from entering the
16 community care facility. The State Department of Social Services
17 may subsequently grant an exemption pursuant to subdivision (g).
18 If the conviction or arrest was for another crime, except a minor
19 traffic violation, the licensee shall, upon notification by the State
20 Department of Social Services, act immediately to either (1)
21 terminate the person's employment, remove the person from the
22 community care facility, or bar the person from entering the
23 community care facility; or (2) seek an exemption pursuant to
24 subdivision (g). The State Department of Social Services shall
25 determine if the person shall be allowed to remain in the facility
26 until a decision on the exemption is rendered. A licensee's failure
27 to comply with the department's prohibition of employment,
28 contact with clients, or presence in the facility as required by this
29 paragraph shall be grounds for disciplining the licensee pursuant
30 to Section 1550.

31 (4) The department may issue an exemption on its own motion
32 pursuant to subdivision (g) if the person's criminal history
33 indicates that the person is of good character based on the age,
34 seriousness, and frequency of the conviction or convictions. The
35 department, in consultation with interested parties, shall develop
36 regulations to establish the criteria to grant an exemption pursuant
37 to this paragraph.

38 (5) Concurrently with notifying the licensee pursuant to
39 paragraph (3), the department shall notify the affected individual
40 of his or her right to seek an exemption pursuant to subdivision (g).



1 The individual may seek an exemption only if the licensee
2 terminates the person's employment or removes the person from
3 the facility after receiving notice from the department pursuant to
4 paragraph (3).

5 (d) (1) Before issuing a license, special permit, or certificate
6 of approval to any person or persons to operate or manage a foster
7 family home or certified family home as described in Section
8 1506, the State Department of Social Services or other approving
9 authority shall secure from an appropriate law enforcement
10 agency a criminal record to determine whether the applicant or any
11 person specified in subdivision (b) has ever been convicted of a
12 crime other than a minor traffic violation or arrested for any crime
13 specified in Section 290 of the Penal Code, for violating Section
14 245 or 273.5, subdivision (b) of Section 273a or, prior to January
15 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for
16 any crime for which the department cannot grant an exemption if
17 the person was convicted and the person has not been exonerated.

18 (2) The criminal history information shall include the full
19 criminal record, if any, of those persons.

20 (3) No fee shall be charged by the Department of Justice or the
21 State Department of Social Services for the fingerprinting of an
22 applicant for a license, special permit, or certificate of approval
23 described in this subdivision. The record, if any, shall be taken into
24 consideration when evaluating a prospective applicant.

25 (4) The following shall apply to the criminal record
26 information:

27 (A) If the applicant or other persons specified in subdivision (b)
28 have convictions that would make the applicant's home unfit as a
29 foster family home or a certified family home, the license, special
30 permit, or certificate of approval shall be denied.

31 (B) If the State Department of Social Services finds that the
32 applicant, or any person specified in subdivision (b) is awaiting
33 trial for a crime other than a minor traffic violation, the State
34 Department of Social Services or other approving authority may
35 cease processing the application until the conclusion of the trial.

36 (C) For the purposes of this subdivision, a criminal record
37 clearance provided under Section 8712 of the Family Code may
38 be used by the department or other approving agency.

39 (D) An applicant for a foster family home license or for
40 certification as a family home, and any other person specified in



1 subdivision (b), shall submit a set of fingerprints to the Department
2 of Justice for the purpose of searching the criminal records of the
3 Federal Bureau of Investigation, in addition to the criminal records
4 search required by subdivision (a). If an applicant meets all other
5 conditions for licensure, except receipt of the Federal Bureau of
6 Investigation's criminal history information for the applicant and
7 all persons described in subdivision (b), the department may issue
8 a license, or the foster family agency may issue a certificate of
9 approval, if the applicant, and each person described in
10 subdivision (b), has signed and submitted a statement that he or she
11 has never been convicted of a crime in the United States, other than
12 a traffic infraction, as defined in paragraph (1) of subdivision (a)
13 of Section 42001 of the Vehicle Code. If, after licensure or
14 certification, the department determines that the licensee, certified
15 foster parent, or any person specified in subdivision (b) has a
16 criminal record, the license may be revoked pursuant to Section
17 1550 and the certificate of approval revoked pursuant to
18 subdivision (b) of Section 1534. The department may also suspend
19 the license pending an administrative hearing pursuant to Section
20 1550.5.

21 (5) Any person specified in this subdivision shall, as a part of
22 the application, be fingerprinted and sign a declaration under
23 penalty of perjury regarding any prior criminal convictions or
24 arrests for any crime against a child, spousal or cohabitant abuse
25 or, any crime for which the department cannot grant an exemption
26 if the person was convicted and shall submit these fingerprints to
27 the licensing agency or other approving authority.

28 (6) (A) The foster family agency shall obtain fingerprints from
29 certified home applicants and from persons specified in
30 subdivision (b) and shall submit them directly to the Department
31 of Justice or send them by electronic transmission in a manner
32 approved by the State Department of Social Services. A foster
33 family home licensee or foster family agency shall submit these
34 fingerprints to the Department of Justice, along with a second set
35 of fingerprints for the purpose of searching the records of the
36 Federal Bureau of Investigation or to comply with paragraph (1)
37 of subdivision (b) prior to the person's employment, residence, or
38 initial presence. A licensee's failure to submit fingerprints to the
39 Department of Justice, or comply with paragraph (1) of
40 subdivision (h), as required in this section, shall result in a citation



1 of a deficiency, and the immediate civil penalties of one hundred
2 dollars (\$100) per violation. The State Department of Social
3 Services may assess penalties for continued violations, as
4 permitted by Section 1548. The fingerprints shall then be
5 submitted to the State Department of Social Services for
6 processing.

7 (B) Upon request of the licensee, who shall enclose a
8 self-addressed envelope for this purpose, the Department of
9 Justice shall verify receipt of the fingerprints. Within five working
10 days of the receipt of the criminal record or information regarding
11 criminal convictions from the Department of Justice, the
12 department shall notify the applicant of any criminal arrests or
13 convictions. If no arrests or convictions are recorded, the
14 Department of Justice shall provide the foster family home
15 licensee or the foster family agency with a statement of that fact
16 concurrent with providing the information to the State Department
17 of Social Services.

18 (7) If the State Department of Social Services finds that the
19 applicant, or any other person specified in subdivision (b), has
20 been convicted of a crime other than a minor traffic violation, the
21 application shall be denied, unless the director grants an
22 exemption pursuant to subdivision (g).

23 (8) If the State Department of Social Services finds after
24 licensure or the granting of the certificate of approval that the
25 licensee, certified foster parent, or any other person specified in
26 paragraph (2) of subdivision (b), has been convicted of a crime
27 other than a minor traffic violation, the license or certificate of
28 approval may be revoked by the department or the foster family
29 agency, whichever is applicable, unless the director grants an
30 exemption pursuant to subdivision (g). A licensee's failure to
31 comply with the department's prohibition of employment, contact
32 with clients, or presence in the facility as required by paragraph (3)
33 of subdivision (c) shall be grounds for disciplining the licensee
34 pursuant to Section 1550.

35 (e) The State Department of Social Services shall not use a
36 record of arrest to deny, revoke, or terminate any application,
37 license, employment, or residence unless the department
38 investigates the incident and secures evidence, whether or not
39 related to the incident of arrest, that is admissible in an
40 administrative hearing to establish conduct by the person that may



1 pose a risk to the health and safety of any person who is or may
2 become a client. The State Department of Social Services is
3 authorized to obtain any arrest or conviction records or reports
4 from any law enforcement agency as necessary to the performance
5 of its duties to inspect, license, and investigate community care
6 facilities and individuals associated with a community care
7 facility.

8 (f) (1) For purposes of this section or any other provision of
9 this chapter, a conviction means a plea or verdict of guilty or a
10 conviction following a plea of nolo contendere. Any action which
11 the State Department of Social Services is permitted to take
12 following the establishment of a conviction may be taken when the
13 time for appeal has elapsed, or the judgment of conviction has been
14 affirmed on appeal or when an order granting probation is made
15 suspending the imposition of sentence, notwithstanding a
16 subsequent order pursuant to Sections 1203.4 and 1203.4a of the
17 Penal Code permitting the person to withdraw his or her plea of
18 guilty and to enter a plea of not guilty, or setting aside the verdict
19 of guilty, or dismissing the accusation, information, or indictment.
20 For purposes of this section or any other provision of this chapter,
21 the record of a conviction, or a copy thereof certified by the clerk
22 of the court or by a judge of the court in which the conviction
23 occurred, shall be conclusive evidence of the conviction. For
24 purposes of this section or any other provision of this chapter, the
25 arrest disposition report certified by the Department of Justice, or
26 documents admissible in a criminal action pursuant to Section
27 969b of the Penal Code, shall be prima facie evidence of the
28 conviction, notwithstanding any other provision of law
29 prohibiting the admission of these documents in a civil or
30 administrative action.

31 (2) For purposes of this section or any other provision of this
32 chapter, the department shall consider criminal convictions from
33 another state or federal court as if the criminal offense was
34 committed in this state.

35 (g) (1) (A) After review of the record, the director may grant
36 an exemption from disqualification for a license or special permit
37 as specified in paragraphs (1) and (4) of subdivision (a), or for a
38 license, special permit, or certificate of approval as specified in
39 paragraphs (4) and (5) of subdivision (d), or for employment,
40 residence, or presence in a community care facility as specified in



1 paragraphs (3), (4), and (5) of subdivision (c), if the director has
2 substantial and convincing evidence to support a reasonable belief
3 that the applicant and the person convicted of the crime, if other
4 than the applicant, are of such good character as to justify issuance
5 of the license or special permit or granting an exemption for
6 purposes of subdivision (c). ~~Except~~ *The record reviewed pursuant*
7 *to this section may be a criminal record obtained through the*
8 *California Law Enforcement Telecommunications System*
9 *(CLETS), for purposes of a temporary exemption decision. A final*
10 *exemption decision shall be based only on the records obtained*
11 *pursuant to a fingerprint clearance check initiated through the*
12 *Department of Justice.*

13 (B) *Except* as otherwise provided in this subdivision, no
14 exemption shall be granted pursuant to this subdivision if the
15 conviction was for any of the following offenses:

16 ~~(A) (i)~~

17 (i) An offense specified in Section 220, 243.4, or 264.1,
18 subdivision (a) of Section 273a or, prior to January 1, 1994,
19 paragraph (1) of Section 273a, Section 273d, 288, or 289,
20 subdivision (a) of Section 290, or Section 368 of the Penal Code,
21 or was a conviction of another crime against an individual
22 specified in subdivision (c) of Section 667.5 of the Penal Code.

23 (ii) Notwithstanding clause (i), the director may grant an
24 exemption regarding the conviction for an offense described in
25 paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5
26 of the Penal Code, if the employee or prospective employee has
27 been rehabilitated as provided in Section 4852.03 of the Penal
28 Code, has maintained the conduct required in Section 4852.05 of
29 the Penal Code for at least 10 years, and has the recommendation
30 of the district attorney representing the employee's county of
31 residence, or if the employee or prospective employee has
32 received a certificate of rehabilitation pursuant to Chapter 3.5
33 (commencing with Section 4852.01) of Title 6 of Part 3 of the
34 Penal Code.

35 ~~(B)~~

36 (C) A felony offense specified in Section 729 of the Business
37 and Professions Code or Section 206 or 215, subdivision (a) of
38 Section 347, subdivision (b) of Section 417, or subdivision (a) of
39 Section 451 of the Penal Code.



1 (2) The department shall not prohibit a person from being
2 employed or having contact with clients in a facility on the basis
3 of a denied criminal record exemption request or arrest
4 information unless the department complies with the requirements
5 of Section 1558.

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

21 (2) The State Department of Social Services shall hold criminal
22 record clearances in its active files for a minimum of two years
23 after an employee is no longer employed at a licensed facility in
24 order for the criminal record clearance to be transferred.

25 (i) The full criminal record obtained for purposes of this section
26 may be used by the department or by a licensed adoption agency
27 as a clearance required for adoption purposes.

28 (j) If a licensee or facility is required by law to deny
29 employment or to terminate employment of any employee based
30 on written notification from the state department that the employee
31 has a prior criminal conviction or is determined unsuitable for
32 employment under Section 1558, the licensee or facility shall not
33 incur civil liability or unemployment insurance liability as a result
34 of that denial or termination.

35 (k) (1) The Department of Justice shall coordinate with the
36 State Department of Social Services to establish and implement an
37 automated live-scan processing system for fingerprints in the
38 district offices of the Community Care Licensing Division of the
39 State Department of Social Services by July 1, 1999. These
40 live-scan processing units shall be connected to the main system



1 at the Department of Justice by July 1, 1999, and shall become part
2 of that department's pilot project in accordance with its long-range
3 plan. The State Department of Social Services may charge a fee for
4 the costs of processing a set of live-scan fingerprints.

5 (2) The Department of Justice shall provide a report to the
6 Senate and Assembly fiscal committees, the Assembly Human
7 Services Committee, and to the Senate Health and Human
8 Services Committee by April 15, 1999, regarding the completion
9 of backlogged criminal record clearance requests for all facilities
10 licensed by the State Department of Social Services and the
11 progress on implementing the automated live-scan processing
12 system in the two district offices pursuant to paragraph (1).

13 (l) Amendments to this section made in the 1999 portion of the
14 1999–2000 Regular Session shall be implemented commencing
15 60 days after the effective date of the act amending this section in
16 the 1999 portion of the 1999–2000 Regular Session, except that
17 those provisions for the submission of fingerprints for searching
18 the records of the Federal Bureau of Investigation shall be
19 implemented 90 days after the effective date of that act.

20 SEC. 2. Section 361.4 of the Welfare and Institutions Code,
21 as amended by Section 5 of Chapter 918 of the Statutes of 2002,
22 is repealed.

23 ~~361.4. (a) Prior to placing a child in the home of a relative,
24 or the home of any prospective guardian or other person who is not
25 a licensed or certified foster parent, the county social worker shall
26 visit the home to ascertain the appropriateness of the placement.~~

27 ~~(b) Whenever a child may be placed in the home of a relative,
28 or the home of any prospective guardian or other person who is not
29 a licensed or certified foster parent, the court or county social
30 worker placing the child shall cause a state and federal level
31 criminal records check to be conducted by an appropriate
32 governmental agency through the California Law Enforcement
33 Telecommunications System pursuant to Section 16504.5. The
34 criminal records check shall be conducted with regard to all
35 persons over the age of 18 years living in the home, and on any
36 other person over the age of 18 years, other than professionals
37 providing professional services to the child, known to the placing
38 entity who may have significant contact with the child, including
39 any person who has a familial or intimate relationship with any
40 person living in the home. A criminal records check may be~~



1 ~~conducted pursuant to this section on any person over the age of~~
2 ~~14 years living in the home who the county social worker believes~~
3 ~~may have a criminal record. Within five judicial days following the~~
4 ~~criminal records check conducted through the California Law~~
5 ~~Enforcement Telecommunications System, the social worker shall~~
6 ~~ensure that a fingerprint clearance check of the relative and any~~
7 ~~other person whose criminal record was obtained pursuant to this~~
8 ~~subdivision is initiated through the Department of Justice to ensure~~
9 ~~the accuracy of the criminal records check conducted through the~~
10 ~~California Law Enforcement Telecommunications System and~~
11 ~~shall review the results of any criminal records check to assess the~~
12 ~~safety of the home. The Department of Justice shall forward~~
13 ~~fingerprint requests for federal level criminal history information~~
14 ~~to the Federal Bureau of Investigation pursuant to this section.~~

15 ~~(e) Whenever a child may be placed in the home of a relative,~~
16 ~~or a prospective guardian or other person who is not a licensed or~~
17 ~~certified foster parent, the county social worker shall cause a check~~
18 ~~of the Child Abuse Index pursuant to subdivision (a) of Section~~
19 ~~11170 of the Penal Code to be requested from the Department of~~
20 ~~Justice. The Child Abuse Index check shall be conducted on all~~
21 ~~persons over the age of 18 years living in the home.~~

22 ~~(d) (1) If the fingerprint clearance check indicates that the~~
23 ~~person has no criminal record, the county social worker and court~~
24 ~~may consider the home of the relative, prospective guardian, or~~
25 ~~other child who is not a licensed or certified foster parent for~~
26 ~~placement of a child.~~

27 ~~(2) If the fingerprint clearance check indicates that the person~~
28 ~~has been convicted of a crime that would preclude licensure under~~
29 ~~Section 1522 of the Health and Safety Code, the child may not be~~
30 ~~placed in the home.~~

31 ~~(e) Nothing in this section shall preclude a county from~~
32 ~~conducting a criminal background check that the county is~~
33 ~~otherwise authorized to conduct using fingerprints.~~

34 ~~(f) This section shall become operative on January 1, 2005.~~

35 SEC. 3. Section 361.4 of the Welfare and Institutions Code,
36 as amended by Section 6 of Chapter 918 of the Statutes of 2002,
37 is amended to read:

38 361.4. (a) Prior to placing a child in the home of a relative,
39 or the home of any prospective guardian or other person who is not



1 a licensed or certified foster parent, the county social worker shall
2 visit the home to ascertain the appropriateness of the placement.

3 (b) Whenever a child may be placed in the home of a relative,
4 or the home of any prospective guardian or other person who is not
5 a licensed or certified foster parent, the court or county social
6 worker placing the child shall cause a state and federal level
7 criminal records check to be conducted by an appropriate
8 governmental agency through the California Law Enforcement
9 Telecommunications System (*CLETS*) pursuant to Section
10 16504.5. The criminal records check shall be conducted with
11 regard to all persons over the age of 18 years living in the home,
12 and on any other person over the age of 18 years, other than
13 professionals providing professional services to the child, known
14 to the placing entity who may have significant contact with the
15 child, including any person who has a familial or intimate
16 relationship with any person living in the home. A criminal records
17 check may be conducted pursuant to this section on any person
18 over the age of 14 years living in the home who the county social
19 worker believes may have a criminal record. Within five judicial
20 days following the criminal records check conducted through the
21 California Law Enforcement Telecommunications System, the
22 social worker shall ensure that a fingerprint clearance check of the
23 relative and any other person whose criminal record was obtained
24 pursuant to this subdivision is initiated through the Department of
25 Justice to ensure the accuracy of the criminal records check
26 conducted through the California Law Enforcement
27 Telecommunications System and shall review the results of any
28 criminal records check to assess the safety of the home. The
29 Department of Justice shall forward fingerprint requests for
30 federal level criminal history information to the Federal Bureau of
31 Investigation pursuant to this section.

32 (c) Whenever a child may be placed in the home of a relative,
33 or a prospective guardian or other person who is not a licensed or
34 certified foster parent, the county social worker shall cause a check
35 of the Child Abuse Index pursuant to subdivision (a) of Section
36 11170 of the Penal Code to be requested from the Department of
37 Justice. The Child Abuse Index check shall be conducted on all
38 persons over the age of 18 years living in the home.

39 (d) (1) If the ~~fingerprint clearance~~ *criminal records* check
40 indicates that the person has no criminal record, the county social



1 worker and court may consider the home of the relative,
2 prospective guardian, or other child who is not a licensed or
3 certified foster parent for *the temporary* placement of a child.
4 *However, a final placement decision shall be based only on the*
5 *records obtained pursuant to the fingerprint clearance check.*

6 (2) If the fingerprint clearance criminal records check indicates
7 that the person has been convicted of a crime that would preclude
8 licensure under Section 1522 of the Health and Safety Code, the
9 child shall not be placed in the home, unless a *temporary* criminal
10 records exemption has been granted by the county, based on
11 substantial and convincing evidence to support a reasonable belief
12 that the person with the criminal conviction is of such good
13 character as to justify the placement and not present a risk of harm
14 to the child, pursuant to paragraph (3) of this subdivision.
15 *However, a final exemption decision shall be based only on the*
16 *records obtained pursuant to the fingerprint clearance check.*

17 (3) (A) A county may issue a criminal records exemption only
18 if that county has been granted permission by the Director of
19 Social Services to issue criminal records exemptions. The county
20 may file a request with the Director of Social Services seeking
21 permission for the county to establish a procedure to evaluate and
22 grant appropriate individual criminal records exemptions for
23 persons described in subdivision (b). The director shall grant or
24 deny the county's request within 14 days of receipt. The county
25 shall evaluate individual criminal records in accordance with the
26 standards and limitations set forth in paragraph (1) of subdivision
27 (g) of Section 1522 of the Health and Safety Code, and in no event
28 shall the county place a child in the home of a person who is
29 ineligible for an exemption under that provision.

30 (B) The department shall monitor county implementation of
31 the authority to grant an exemption under this paragraph to ensure
32 that the county evaluates individual criminal records and allows or
33 disallows placements according to the standards set forth in
34 paragraph (1) of subdivision (g) of Section 1522 of the Health and
35 Safety Code.

36 (4) The department shall conduct an evaluation of the
37 implementation of paragraph (3) through random sampling of
38 county exemption decisions.

39 (5) The State Department of Social Services shall not evaluate
40 or grant criminal record exemption requests for persons described



1 in subdivision (b), unless the exemption request is made by an
2 Indian tribe pursuant to subdivision (f).

3 (6) If a county has not requested, or has not been granted,
4 permission by the State Department of Social Services to establish
5 a procedure to evaluate and grant criminal records exemptions, the
6 county may not place a child into the home of a person described
7 in subdivision (b) if any person residing in the home has been
8 convicted of a crime other than a minor traffic violation, except as
9 provided in subdivision (f).

10 (e) Nothing in this section shall preclude a county from
11 conducting a criminal background check that the county is
12 otherwise authorized to conduct using fingerprints.

13 (f) Upon request from an Indian tribe, the State Department of
14 Social Services shall evaluate an exemption request, if needed, to
15 allow placement into an Indian home that the tribe has designated
16 for placement under the Indian Child Welfare Act (25 U.S.C. Sec.
17 1901 et seq.) that would otherwise be barred under this section.
18 However, if the county with jurisdiction over the child that is the
19 subject of the tribe's request has established an approved
20 procedure pursuant to paragraph (3) of subdivision (d), the tribe
21 may request that the county evaluate the exemption request. Once
22 a tribe has elected to have the exemption request reviewed by
23 either the State Department of Social Services or the county, the
24 exemption decision may only be made by that entity. Nothing in
25 this subdivision limits the duty of a county social worker to
26 evaluate the home for placement or to gather information needed
27 to evaluate an exemption request.

28 ~~(g) This section shall remain in effect only until January 1,~~
29 ~~2005, and as of that date is repealed, unless a later enacted statute,~~
30 ~~that is enacted before January 1, 2005, deletes or extends that date.~~

