

ASSEMBLY BILL

No. 1240

Introduced by Assembly Member Mullin

February 21, 2003

An act to amend Sections 1522, 1568.09, 1569.17, and 1596.871 of the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1240, as introduced, Mullin. Care facilities: criminal record clearances.

Existing law requires, as a condition of the State Department of Social Services or other licensing agency issuing a license, permit, or certificate of approval, as appropriate, for a person to operate or to provide direct care services in a community care facility, residential care facility for persons with a chronic life-threatening illness, residential care facility for the elderly, or day care facility, the fingerprinting of, and criminal record clearance for, applicants and persons to be employed by, reside at, or be present in the any of these facilities, except as specified. Existing law requires the Department of Justice to conduct the search for criminal history information, and also to have a 2nd set of fingerprints processed by the Federal Bureau of Investigation.

Existing law also authorizes the department to revoke a license, permit, or certificate for approval to operate or manage these facilities if any person employed by, residing at, or present in, in specified capacities, a facility listed above has been convicted of specified offenses, unless the department has granted an exemption from disqualification.

This bill would authorize the department to take specified actions if it is determined, after licensure, the issuance of a special permit, or the granting of a certificate of approval to manage or operate a facility listed above, that a licensee, special permit holder, certificate holder, as appropriate, or person employed by, residing at, or present in the facility, in specified capacities, has been convicted of specified offenses.

Existing law requires that, subsequent to initial licensure a licensee must obtain fingerprinting and a criminal record clearance for any persons who is employed by, resides at, or is present in, a facility.

This bill would require the department to issue against the licensee, special permit holder, or certificate holder a citation of deficiency and assess civil penalties, as specified, for failure to exclude specified persons convicted of specified offenses who have not obtained a criminal record clearance or an exemption, and would provide that the licensee's failure to exclude these persons would be grounds for disciplining the licensee.

Existing law requires the department to notify an individual with an arrest or conviction of his or her right to seek an exemption from disqualification.

This bill would eliminate that requirement and would authorize only an applicant for, or a holder of, a license, special permit, or certificate of approval to request an exemption on behalf of an individual with a record of specified convictions or arrests.

Existing law establishes a procedure by which the director may grant an exemption from disqualification for a license, special permit, or certificate of approval to manage or operate a facility listed above, or to be employed by, reside in, or be present in a facility listed above. Existing law provides that an exemption shall not be granted if the conviction was for specified offenses.

This bill would expand that list of offenses.

This bill would also make various conforming changes and correct cross-references.

Because a violation of any law relating to these facilities is a crime, this bill would impose 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.

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

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

18 (a) (1) Before issuing a license or special permit to any person
19 or persons to operate or manage a community care facility, *and*
20 *before any person specified in subdivision (b) who is not exempted*
21 *from fingerprinting is employed by, resides at, or is present in a*
22 *community care facility*, the State Department of Social Services
23 shall secure from an appropriate law enforcement agency a
24 criminal ~~record~~ *history information* to determine whether the
25 applicant or any other person specified in subdivision (b) *who is*
26 *not exempted from fingerprinting* has ~~ever been convicted~~ *any of*
27 *the following:*

28 (A) *A conviction of a crime other than a minor traffic violation*
29 ~~or arrested.~~

30 (B) *An arrest for any crime specified in Section 290 of the*
31 *Penal Code, for violating Section 245 or 273.5 of the Penal Code,*
32 *for violating subdivision (b) of Section 273a of the Penal Code, or,*



1 prior to January 1, 1994, paragraph (2) of Section 273a of the Penal
2 Code, ~~or for~~.

3 (C) *A conviction of any crime for which the person has not been*
4 *exonerated and for which the department cannot may not grant an*
5 *exemption if the person was convicted and the person has not been*
6 *exonerated from disqualification pursuant to subdivision (g).*

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

10 (3) ~~No fee shall be charged by the~~ *Notwithstanding subdivision*
11 *(k), neither the Department of Justice or nor the State Department*
12 *of Social Services may charge a fee for the fingerprinting of an*
13 *applicant for a license or special permit to operate a facility*
14 *providing nonmedical board, room, and care for six or less fewer*
15 *children, or for obtaining a criminal record history of the applicant*
16 *pursuant to this section.*

17 (4) The following shall apply to the criminal record
18 information:

19 (A) If the State Department of Social Services finds that the
20 applicant, or any other person specified in subdivision (b) *who is*
21 *not exempted from fingerprinting*, has been convicted of a crime
22 other than a minor traffic violation, *or arrested for a crime*
23 *specified in subparagraph (B) of paragraph (1), subject to*
24 *subdivision (e)*, the application shall be denied, unless the director
25 grants an exemption pursuant to subdivision (g).

26 (B) If the ~~State Department of Social Services~~ *department* finds
27 that the applicant, or any other person specified in subdivision (b)
28 *who is not exempted from fingerprinting*, is awaiting trial for a
29 crime other than a minor traffic violation, the ~~State Department of~~
30 ~~Social Services~~ *department* may cease processing the application
31 until the conclusion of the trial *or other disposition of the case*.

32 (C) If no criminal ~~record~~ *history* information has been
33 recorded, the Department of Justice shall provide the applicant and
34 the State Department of Social Services with a statement of that
35 fact.

36 (D) If the ~~State Department of Social Services~~ *department*
37 finds after licensure *or the issuance of a special permit* that the
38 licensee, *special permit holder*, or any other person specified in
39 ~~paragraph (2) of~~ subdivision (b) *who is not exempted from*
40 *fingerprinting*, has been convicted of a crime other than a minor



1 traffic violation, *or arrested for a crime specified in subparagraph*
2 *(B) of paragraph (1), subject to subdivision (e), the license or*
3 *special permit may be revoked, unless the director grants an*
4 *exemption pursuant to subdivision (g).*

5 (E) ~~An~~ *In addition to the criminal records search required by*
6 *this subdivision, an applicant and any other person specified in*
7 ~~subdivision (b) for licensure or for a special permit to operate or~~
8 *manage a community care facility shall submit a second set of*
9 *fingerprints to the Department of Justice for the purpose of*
10 *searching the criminal records of the Federal Bureau of*
11 *Investigation, in addition to the criminal records search required*
12 ~~by this subdivision. If an applicant and all other persons described~~
13 ~~in subdivision (b) meet~~ *meets all of the conditions for licensure,*
14 *except for the State Department of Social Services' receipt of the*
15 *Federal Bureau of Investigation's criminal history information for*
16 *the applicant or any of the persons described in subdivision (b), the*
17 *department may issue a license or special permit if the applicant*
18 ~~and each person described in subdivision (b) has signed and~~
19 *submitted a statement declaration, under penalty of perjury, that*
20 *he or she has never been convicted of a crime in the United States,*
21 *other than a traffic infraction, as defined in punishable pursuant*
22 *to paragraph (1) of subdivision (a) of Section 42001 of the Vehicle*
23 *Code, or arrested for a crime specified in subparagraph (B) of*
24 *paragraph (1). If, after licensure or the granting of a special*
25 *permit, the department determines, based on the results from the*
26 *Federal Bureau of Investigation's criminal record search, that the*
27 *licensee or special permit holder has a conviction for any crime*
28 *other than a minor traffic violation, or has been arrested for a*
29 *crime specified in subparagraph (B) of paragraph (1), subject to*
30 *subdivision (e), the department may revoke the license pursuant to*
31 *Section 1550. The department may also suspend the license*
32 *pending an administrative hearing pursuant to Section 1550.5.*

33 (F) *In addition to the criminal records search required by this*
34 *subdivision, each person specified in subdivision (b) who is not*
35 *exempted from fingerprinting shall submit a second set of*
36 *fingerprints to the Department of Justice for the purpose of*
37 *searching the criminal records of the Federal Bureau of*
38 *Investigation for records for that person. If any person specified in*
39 *subdivision (b) who is not exempted from fingerprinting obtains*
40 *either a criminal record clearance from the Department of Justice*



1 or an exemption from disqualification pursuant to subdivision (g)
2 from the State Department of Social Services pending the
3 department's receipt of the Federal Bureau of Investigation's
4 criminal history information for that person, the department may
5 allow that person to be employed by, reside at, or be present, in the
6 community care facility if the person has signed and submitted to
7 the department a declaration, under penalty of perjury, that he or
8 she has never been convicted of a crime in the United States, other
9 than a traffic infraction punishable pursuant to paragraph (1) of
10 subdivision (a) of Section 42001 of the Vehicle Code or the crime
11 for which the exemption from disqualification was granted, or
12 arrested for a crime specified in subparagraph (B) of paragraph
13 (1). If, after obtaining a criminal record clearance or exemption
14 from disqualification pursuant to subdivision (g) for a person
15 specified in subdivision (b) who is not exempted from
16 fingerprinting, the department determines, based on the results
17 from the Federal Bureau of Investigation's criminal record search,
18 that the person has a conviction for any crime other than a minor
19 traffic violation, or has been arrested for a crime specified in
20 subparagraph (B) of paragraph (1), subject to subdivision (e), the
21 department shall determine if the person should be removed or
22 excluded, or both, from the facility pursuant to paragraph (3) of
23 subdivision (c) until a decision on the exemption from
24 disqualification is rendered.

25 (G) If, after licensure or the granting of a special permit, the
26 department determines that the licensee or special permit holder
27 or any other person specified in subdivision (b) who is not
28 exempted from fingerprinting has a ~~criminal record~~ conviction of
29 an offense other than a minor traffic violation, or a record of arrest
30 for any crime specified in subparagraph (B) of paragraph (1),
31 subject to subdivision (e), the license may be revoked pursuant to
32 Section 1550. The department may also suspend the license
33 pending an administrative hearing pursuant to Section 1550.5.

34 (b) (1) In addition to the applicant, this section shall be
35 applicable to criminal convictions and arrests of the following
36 persons:

37 (A) Adults responsible for administration or direct supervision
38 of staff.

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



1 (C) Any person who provides client assistance in dressing,
2 grooming, bathing, or personal hygiene. Any nurse assistant or
3 home health aide meeting the requirements of Section 1338.5 or
4 1736.6, respectively, who is not employed, retained, or contracted
5 by the licensee, and who has been certified or recertified on or after
6 July 1, 1998, shall be deemed to meet the criminal record clearance
7 requirements of this section. A certified nurse assistant and
8 certified home health aide who will be providing client assistance
9 and who falls under this exemption shall provide one copy of his
10 or her current certification, prior to providing care, to the
11 community care facility. The facility shall maintain the copy of the
12 certification on file as long as care is being provided by the
13 certified nurse assistant or certified home health aide at the facility.
14 Nothing in this paragraph restricts the right of the department to
15 exclude a certified nurse assistant or certified home health aide
16 from a licensed community care facility pursuant to Section 1558.

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

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

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

28 (2) The following persons are exempt from the requirements
29 applicable under paragraph (1):-:

30 (A) A medical professional as defined in department
31 regulations who holds a valid license or certification from the
32 person's governing California medical care regulatory entity and
33 who is not employed, retained, or contracted by the licensee *or*
34 *special permit holder* if all of the following apply:

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

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



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

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

5 (B) A third-party repair person or similar retained contractor if
6 all of the following apply:

7 (i) The person is hired for a defined, time-limited job.

8 (ii) The person is not left alone with clients.

9 (iii) When clients are present in the room in which the
10 repairperson or contractor is working, a staff person who has a
11 criminal record clearance or exemption is also present.

12 (C) Employees of a licensed home health agency and other
13 members of licensed hospice interdisciplinary teams who have a
14 contract with a client or resident of the facility and are in the
15 facility at the request of that client or resident's legal
16 decisionmaker. The exemption shall not apply to a person who is
17 a community care facility licensee, *special permit holder*, or an
18 employee of the facility.

19 (D) Clergy and other spiritual caregivers who are performing
20 services in common areas of the community care facility or who
21 are advising an individual client at the request of, or with the
22 permission of, the client or legal decisionmaker, are exempt from
23 fingerprint and criminal background check requirements imposed
24 by community care licensing. This exemption shall not apply to a
25 person who is a community care licensee, *special permit holder*,
26 or employee of the facility.

27 (E) Members of fraternal, service, or similar organizations who
28 conduct group activities for clients if all of the following apply:

29 (i) Members are not left alone with clients.

30 (ii) Members do not transport clients off the facility premises.

31 (iii) The same organization does not conduct group activities
32 for clients more often than defined by the department's
33 regulations.

34 (3) In addition to the exemptions in paragraph (2), the
35 following persons in foster family homes, certified family homes,
36 and small family homes are exempt from the requirements
37 applicable under paragraph (1):

38 (A) Adult friends and family of the licensee *or special permit*
39 *holder* who come into the home to visit for a length of time no
40 longer than defined by the department in regulations, provided that



1 the adult friends and family of the licensee *or special permit*
2 *holder* are not left alone with the foster children.

3 (B) Parents of a foster child's friends when the foster child is
4 visiting the friend's home and the friend, foster parent, or both are
5 also present.

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

9 (A) Unless contraindicated by the client's individualized
10 program plan (IPP) or needs and service plan, a spouse, significant
11 other, relative, or close friend of a client, or an attendant or a
12 facilitator for a client with a developmental disability if the
13 attendant or facilitator is not employed, retained, or contracted by
14 the licensee *or special permit holder*. This exemption applies only
15 if the person is visiting the client or providing direct care and
16 supervision to the client.

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

18 (i) The volunteer is supervised by the licensee *or special permit*
19 *holder* or a facility employee with a criminal record clearance or
20 exemption.

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

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

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

36 (B) Nothing in this subdivision shall prevent a licensee *or*
37 *special permit holder* from requiring a criminal record clearance
38 of any individual exempt from the requirements of this section,
39 provided that the individual has client contact.



1 (6) Any person similar to those described in this subdivision,
2 as defined by the department in regulations, *is exempt from the*
3 *requirements applicable under paragraph (1).*

4 (c) (1) ~~Subsequent to initial licensure, any~~ Any person
5 specified in subdivision (b) ~~and who is not exempted from~~
6 fingerprinting shall, ~~as a condition to employment, residence, or~~
7 ~~presence in a community care facility,~~ *obtain either a criminal*
8 *record clearance from the Department of Justice or an exemption*
9 *from disqualification pursuant to subdivision (g) from the State*
10 *Department of Social Services prior to his or her initial presence*
11 *in a facility. Any person specified in subdivision (b) who is not*
12 *exempted from fingerprinting shall be fingerprinted and shall sign*
13 *a declaration, under penalty of perjury, regarding any prior*
14 ~~criminal convictions~~ *conviction or any arrest for any crime*
15 *specified in subparagraph (B) of paragraph (1) of subdivision (a).*
16 *The licensee or special permit holder shall submit these*
17 *fingerprints to the Department of Justice, along with a second set*
18 *of fingerprints for the purpose of searching the records of the*
19 *Federal Bureau of Investigation, or to shall comply with*
20 ~~paragraph (1) of subdivision (h), prior to the person's~~
21 ~~employment, residence, or initial presence in the community care~~
22 ~~facility.~~ *These fingerprints shall be on a card provided in a form*
23 *required by the State Department of Social Services or sent by*
24 *electronic transmission in a manner approved by the State*
25 *Department of Social Services and the Department of Justice for*
26 *the purpose of obtaining a permanent set of fingerprints, and shall*
27 *be submitted to the Department of Justice by the licensee or*
28 *special permit holder. A licensee's or a special permit holder's*
29 *failure to prohibit the initial presence in a facility of any person*
30 *specified in subdivision (b) who is not exempted from*
31 *fingerprinting and who has not received either a criminal record*
32 *clearance or an exemption from disqualification pursuant to*
33 *subdivision (g) shall result in the citation of a deficiency and the*
34 *immediate assessment of civil penalties, by the State Department*
35 *of Social Services and against the licensee or special permit*
36 *holder, in the amount of one hundred dollars (\$100) per violation*
37 *per day, and also shall be grounds for disciplining the licensee*
38 *pursuant to Section 1550. A licensee's or a special permit holder's*
39 *failure to submit fingerprints to the Department of Justice or to*
40 *comply with paragraph (1) of subdivision (h), as required in this*



1 section, shall result in the citation of a deficiency and the
2 immediate assessment of civil penalties, *by the State Department*
3 *of Social Services and against the licensee or special permit*
4 *holder, in the amount of one hundred dollars (\$100) per violation*
5 *per day, and shall be grounds for disciplining the licensee pursuant*
6 *to Section 1550. The department may also assess civil penalties*
7 *against the licensee for continued violations as permitted by*
8 *Section 1548. The fingerprints shall then be submitted to the State*
9 *Department of Social Services Justice for processing. Upon*
10 *request of the licensee or special permit holder, who shall enclose*
11 *a self-addressed stamped postcard for this purpose, the*
12 *Department of Justice shall verify receipt of the fingerprints.*

13 (2) Within 14 calendar days of the receipt of the fingerprints,
14 the Department of Justice shall notify the State Department of
15 Social Services of the criminal ~~record~~ *history* information, as
16 provided for in subdivision (a). If no criminal ~~record~~ *history*
17 information has been recorded, the Department of Justice shall
18 provide the licensee *or special permit holder* and the State
19 Department of Social Services with a statement of that fact within
20 14 calendar days of receipt of the fingerprints. Documentation of
21 the individual's clearance or exemption *from disqualification*
22 *pursuant to subdivision (g)* shall be maintained by the licensee *or*
23 *special permit holder* and shall be available for inspection. If new
24 fingerprints are required for processing, the Department of Justice
25 shall, within 14 calendar days from the date of receipt of the
26 fingerprints, notify the licensee *or special permit holder* that the
27 fingerprints ~~were illegible~~ *are required. When live-scan*
28 ~~technology is operational, as defined in Section 1522.04, the~~ *The*
29 *Department of Justice shall notify the State Department of Social*
30 *Services, as required by that section Section 1522.04, and shall*
31 *also notify the licensee or special permit holder by mail, within 14*
32 *days of electronic transmission of the fingerprints to the*
33 *Department of Justice, if the person has no criminal history*
34 *recorded. A violation of the regulations adopted pursuant to*
35 *Section 1522.04 shall result in the citation of a deficiency and an*
36 *immediate assessment of civil penalties, by the State Department*
37 *of Social Services and against the licensee or special permit*
38 *holder, in the amount of one hundred dollars (\$100) per violation*
39 *per day, and shall be grounds for disciplining the licensee pursuant*



1 to Section 1550. The department may also assess civil penalties for
2 continued violations as permitted by Section 1548.

3 (3) Except for persons specified in ~~paragraph (2)~~ of subdivision
4 (b) *as exempt from the criminal record clearance requirement*, the
5 licensee *or special permit holder* shall endeavor to ascertain the
6 previous employment history of persons required to be
7 fingerprinted under ~~this~~ subdivision (b). If it is determined by the
8 State Department of Social Services, on the basis of the
9 fingerprints submitted to the Department of Justice, that
10 *subsequent to obtaining a criminal record clearance or exemption*
11 *from disqualification pursuant to subdivision (g)*, the person has
12 been convicted of, or is awaiting trial for, a sex offense against a
13 minor, or has been convicted for an offense specified in Section
14 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, *or*
15 *has been arrested for any crime specified in subparagraph (B) of*
16 *paragraph (1) of subdivision (a), subject to subdivision (e)*, the
17 State Department of Social Services shall notify the licensee *or*
18 *special permit holder* to act immediately to terminate the person's
19 employment, remove the person from the community care facility,
20 or bar the person from entering the community care facility, *as*
21 *appropriate*. The State Department of Social Services may
22 subsequently grant an exemption *from disqualification* pursuant
23 to subdivision (g). If the conviction ~~or arrest~~ was for another crime,
24 except a minor traffic violation, the licensee *or special permit*
25 *holder* shall, upon notification by the ~~State Department of Social~~
26 ~~Services~~ *department*, act immediately to either ~~(1)~~ (A) terminate
27 the person's employment, remove the person from the community
28 care facility, or bar the person from entering the community care
29 facility, *as appropriate*; or ~~(2)~~ (B) seek an exemption *from*
30 *disqualification* pursuant to subdivision (g). ~~The State Department~~
31 ~~of Social Services~~ *department* shall determine if the person shall
32 be allowed to remain in the facility until a decision on the
33 exemption *from disqualification* is rendered. A licensee's *or*
34 *special permit holder's* failure to comply with the department's
35 prohibition of employment, contact with clients, or presence in the
36 facility as required by this paragraph shall *result in a citation of a*
37 *deficiency and an immediate assessment of civil penalties, by the*
38 *department and against the licensee or special permit holder, in the*
39 *amount of one hundred dollars (\$100) per violation per day, and*



1 shall be grounds for disciplining the licensee pursuant to Section
2 1550.

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

11 ~~(5) Concurrently with notifying the licensee pursuant to~~
12 ~~paragraph (3), the department shall notify the affected individual~~
13 ~~of his or her right to seek an exemption pursuant to subdivision (g).~~
14 ~~The individual may seek an exemption only if the licensee~~
15 ~~terminates the person's employment or removes the person from~~
16 ~~the facility after receiving notice from the department pursuant to~~
17 ~~paragraph (3). Only an applicant for licensure or a licensee, or an~~
18 ~~applicant for a special permit or a special permit holder, may~~
19 ~~request an exemption pursuant to subdivision (g) on behalf of an~~
20 ~~individual specified in subdivision (b) who is not exempt from~~
21 ~~fingerprinting.~~

22 (d) (1) Before issuing a license, special permit, or certificate
23 of approval to any person or persons to operate or manage a foster
24 family home or certified family home as described in Section
25 1506, the State Department of Social Services or other approving
26 authority shall secure *criminal history information* from an
27 appropriate law enforcement agency ~~a criminal record~~ to
28 determine whether the applicant or any person specified in
29 subdivision (b) *who is not exempted from fingerprinting* has ever
30 been convicted of a crime other than a minor traffic violation or
31 arrested for any crime specified in Section 290 of the Penal Code,
32 for violating Section 245 or 273.5 of the Penal Code, for violating
33 subdivision (b) of Section 273a or, prior to January 1, 1994,
34 paragraph (2) of Section 273a of the Penal Code, or for any crime
35 for which *the person has not been exonerated and for which the*
36 ~~department cannot~~ *may not* grant an exemption ~~if the person was~~
37 ~~convicted and the person has not been exonerated from~~
38 *disqualification pursuant to subdivision (g).*



1 (2) The criminal history information shall include the full
2 criminal record, if any, of those persons *and arrest information*
3 *pursuant to Section 11105.2 of the Penal Code.*

4 (3) ~~No fee shall be charged by the~~ *Notwithstanding subdivision*
5 *(k), neither the Department of Justice or nor the State Department*
6 *of Social Services may charge a fee for the fingerprinting of an*
7 *applicant for a license, special permit, or certificate of approval*
8 *described in this subdivision. The ~~record~~ criminal history, if any,*
9 *shall be taken into consideration when evaluating a prospective*
10 *applicant.*

11 (4) The following shall apply to the criminal ~~record~~ *history*
12 *information:*

13 (A) If the applicant or other persons specified in subdivision (b)
14 *who are not exempted from fingerprinting* ~~have convictions~~ *any*
15 *conviction or arrest that would make the applicant's home unfit as*
16 *a foster family home or a certified family home, the license, special*
17 *permit, or certificate of approval shall be denied.*

18 (B) If the State Department of Social Services finds that the
19 applicant, or any person specified in subdivision (b) *who is not*
20 *exempted from fingerprinting*, is awaiting trial for a crime other
21 than a minor traffic violation, the ~~State Department of Social~~
22 ~~Services~~ *department* or other approving authority may cease
23 processing the application until the conclusion of the trial *or other*
24 *disposition of the case.*

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

28 (D) An applicant for a foster family home license *or special*
29 *permit*, or for certification as a family home, and any other person
30 specified in subdivision (b) *who is not exempted from*
31 *fingerprinting*, shall submit a set of fingerprints to the Department
32 of Justice for the purpose of searching the criminal records of the
33 Federal Bureau of Investigation, in addition to the criminal records
34 search required by subdivision (a). If an applicant meets all other
35 conditions for licensure, *for a special permit, or for certification,*
36 *except the State Department of Social Services' receipt of the*
37 *Federal Bureau of Investigation's criminal history information for*
38 *the applicant and all persons described in subdivision (b) who are*
39 *not exempted from fingerprinting*, the department may issue a
40 license *or special permit*, or the foster family agency may issue a



1 certificate of approval, if the applicant, and each person described
2 in subdivision (b) *who is not exempted from fingerprinting*, has
3 signed and submitted a ~~statement~~ *declaration, under penalty of*
4 *perjury*, that he or she has never been convicted of a crime in the
5 United States, other than a traffic infraction, ~~as defined in~~
6 *punishable pursuant to* paragraph (1) of subdivision (a) of Section
7 42001 of the Vehicle Code, *or arrested for any crime specified in*
8 *paragraph (1)*. If, after licensure, *the issuance of a special permit,*
9 *or certification*, the department determines that the licensee,
10 *special permit holder*, certified foster parent, or any person
11 specified in subdivision (b) *who is not exempted from*
12 *fingerprinting* has a criminal ~~record~~ *history of any conviction or*
13 *arrest as specified in this paragraph, subject to subdivision (e)*, the
14 license may be revoked pursuant to Section 1550 and the
15 certificate of approval revoked pursuant to subdivision (b) of
16 Section 1534. The department may also suspend the license
17 pending an administrative hearing pursuant to Section 1550.5.

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

26 (6) (A) The foster family agency shall obtain fingerprints
27 from *foster family homes and certified home applicants*, and from
28 persons specified in subdivision (b) *who are not exempted from*
29 *fingerprinting*, and shall submit them directly to the Department
30 of Justice or send them by electronic transmission in a manner
31 approved by the State Department of Social Services. A foster
32 family home licensee or *special permit holder, certified family*
33 *home, or foster family agency* shall submit these fingerprints to the
34 Department of Justice, along with a second set of fingerprints for
35 the purpose of searching the records of the Federal Bureau of
36 Investigation, or ~~to~~ *shall* comply with paragraph (1) of subdivision
37 ~~(b)~~ *(h)*, prior to the person's employment, residence, or initial
38 presence. A licensee's, *special permit holder's, or certificate*
39 *holder's* failure to submit fingerprints to the Department of Justice,
40 or *to* comply with paragraph (1) of subdivision (h), as required in



1 this section, shall result in a citation of a deficiency, and the
2 immediate civil penalties, *by the department and against the*
3 *licensee, special permit holder, or certificate holder* of one
4 hundred dollars (\$100) per violation *per day*. The State
5 Department of Social Services may assess penalties for continued
6 violations, as permitted by Section 1548. The fingerprints shall
7 then be submitted to the State Department of Social Services for
8 processing.

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

22 (7) If the State Department of Social Services finds that the
23 applicant, or any other person specified in subdivision (b) *who is*
24 *not exempted from fingerprinting*, has been convicted of a crime
25 other than a minor traffic violation *or arrested for any crime*
26 *specified in paragraph (1)*, the application shall be denied, unless
27 the director grants an exemption pursuant to subdivision (g).

28 (8) If the State Department of Social Services finds after
29 licensure or the granting of ~~the~~ *a special permit or a certificate* of
30 approval that the licensee, *special permit holder, certified foster*
31 *parent, or any other person specified in* ~~paragraph (2) of~~
32 subdivision (b) *who is not exempt from fingerprinting*, has been
33 convicted of a crime other than a minor traffic violation, *or*
34 *arrested for any crime specified in paragraph (1)*, the license,
35 *special permit, or certificate of approval* may be revoked by the
36 department or the foster family agency, whichever is applicable,
37 unless the director grants an exemption pursuant to subdivision
38 (g). A licensee's, *special permit holder's, or certificate holder's*
39 failure to comply with the department's prohibition of
40 employment, contact with clients, or presence in the facility as



1 required by paragraph (3) of subdivision (c) shall *result in a*
2 *citation of a deficiency, and the immediate assessment of a civil*
3 *penalty, by the department and against the licensee, special permit*
4 *holder, or certificate holder of one hundred dollars (\$100) per*
5 *violation per day. The department may also assess penalties for*
6 *continued violations, pursuant to Section 1548. A licensee's,*
7 *special permit holder's, or certificate holder's failure to comply*
8 *with the department's prohibition of employment, contact with*
9 *clients, or presence in the facility shall also be grounds for*
10 disciplining the licensee pursuant to Section 1550.

11 (e) The State Department of Social Services shall not use a
12 record of arrest to deny, revoke, or terminate any application,
13 license, *special permit, certificate of approval*, employment, or
14 residence unless the department investigates the incident and
15 secures evidence, whether or not related to the incident of arrest,
16 that is admissible in an administrative hearing to establish conduct
17 by the person that may pose a risk to the health and safety of any
18 person who is or may become a client. The ~~State Department of~~
19 ~~Social Services~~ *department* is authorized to obtain any arrest or
20 conviction records or reports from any law enforcement agency as
21 necessary to the performance of its duties to inspect, license, *issue*
22 *a special permit for*, and investigate community care facilities and
23 individuals associated with a community care facility.

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



1 arrest disposition report certified by the Department of Justice, or
2 documents admissible in a criminal action pursuant to Section
3 969b of the Penal Code, shall be prima facie evidence of the
4 conviction, notwithstanding any other provision of law
5 prohibiting the admission of these documents in a civil or
6 administrative action.

7 (2) For purposes of this section or any other provision of this
8 chapter, the department shall consider criminal convictions from
9 another state or federal court, *or arrests from another state or by*
10 *any federal agency*, as if the criminal offense was committed in this
11 state.

12 (g) (1) After review of the record, the director may grant an
13 exemption from disqualification for a license or special permit as
14 specified in ~~paragraphs (1) and (4) of~~ subdivision (a), or for a
15 license, special permit, or certificate of approval as specified in
16 ~~paragraphs (4) and (5) of~~ subdivision (d), or for employment,
17 residence, or presence in a community care facility as specified in
18 ~~paragraphs (3), (4), and (5) of~~ subdivision (c), if the director has
19 substantial and convincing evidence to support a reasonable belief
20 that the applicant ~~and the~~ *or other* person convicted of, *or arrested*
21 *for*; the crime, ~~if other than the applicant, are~~ *is* of such good
22 character as to justify issuance of the license ~~or~~, special permit, *or*
23 *certificate of approval*, or *the* granting of an exemption ~~for~~
24 ~~purposes of subdivision (e) pursuant to this subdivision.~~ Except as
25 otherwise provided in this subdivision, no exemption shall be
26 granted pursuant to this subdivision if the conviction was for any
27 of the following offenses:

28 (A) (i) An offense specified in Section 220, ~~243.4, or 264.1,~~
29 ~~subdivision (a) of Section 273a or, prior to January 1, 1994,~~
30 ~~paragraph (1) of Section 273a, Section 273d, 288, or 289,~~
31 ~~subdivision (a) of Section 290, or Section 368 of the Penal Code,~~
32 ~~or was~~ *subdivision (b) of Section 237, Section 243.4, Section 246,*
33 *Section 264.1, Section 266a, Section 266e, Section 273a, Section*
34 *273ab, Section 273d, subdivision (e) of Section 273.5, Section 288,*
35 *or Section 289, of the Penal Code, any conviction for which the*
36 *person is required to register as a sex offender pursuant to Section*
37 *290 of the Penal Code, Section 368, or subdivision (b) of Section*
38 *417, of the Penal Code, a conviction of ~~another~~ any crime against*
39 *an individual specified in subdivision (c) of Section 667.5 of the*
40 *Penal Code, or any crime of violence specified in any regulation.*



1 (ii) Notwithstanding clause (i), the director may grant an
2 exemption regarding the conviction for an offense described in
3 paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5
4 of the Penal Code, if the *applicant*, employee, or prospective
5 employee has been rehabilitated as provided in Section 4852.03 of
6 the Penal Code, has maintained the conduct required in Section
7 4852.05 of the Penal Code for at least 10 years, and has the
8 recommendation of the district attorney representing the
9 *applicant's*, employee's, or *prospective employee's* county of
10 residence, or if the *applicant*, employee, or prospective employee
11 has received a certificate of rehabilitation pursuant to Chapter 3.5
12 (commencing with Section 4852.01) of Title 6 of Part 3 of the
13 Penal Code.

14 (B) A felony offense specified in Section 729 of the Business
15 and Professions Code or ~~Section 206~~ or in *Section 206*, *Section*
16 *215*, subdivision (a) of Section 347, subdivision (b) of Section
17 417, or subdivision (a) of Section 451, of the Penal Code.

18 (C) *An offense specified in Section 11379.6.*

19 (D) *First degree burglary specified in Sections 459 and 460 of*
20 *the Penal Code.*

21 (2) The department shall not prohibit a person from being
22 employed *by or from* having contact with clients in a facility on
23 the basis of a denied criminal record exemption request or arrest
24 information unless the department complies with the requirements
25 of Section 1558.

26 (h) (1) For purposes of compliance with this section, the
27 ~~department~~ *State Department of Social Services* may permit an
28 individual to transfer a current criminal record clearance, as
29 defined in subdivision (a), from one facility to another, as long as
30 the criminal record clearance has been processed through a state
31 licensing district office, and is being transferred to another facility
32 licensed by a state licensing district office. The request shall be in
33 writing to the ~~State Department of Social Services~~ *department*,
34 and shall include a copy of the person's driver's license or valid
35 identification card issued by the Department of Motor Vehicles, or
36 a valid photo identification issued by another state or the United
37 States government if the person is not a California resident. Upon
38 request of the licensee, who shall enclose a self-addressed
39 envelope for this purpose, the ~~State Department of Social Services~~



1 *department* shall verify whether the individual has a clearance that
2 can be transferred.

3 (2) The ~~State Department of Social Services~~ *department* shall
4 hold criminal record clearances in its active files for a minimum
5 of two years after ~~an employee~~ *a person* is no longer employed ~~at~~
6 *by, residing at, or present in* a licensed facility in order for the
7 criminal record clearance to be transferred.

8 (i) The full criminal ~~record~~ *history* obtained for purposes of this
9 section may be used by the department or by a licensed adoption
10 agency as a clearance required for adoption purposes.

11 (j) If a licensee, *special permit holder, certificate holder,* or
12 facility is required by law to deny employment or to terminate
13 employment of any employee based on written notification from
14 the ~~state~~ department that the employee has a prior criminal
15 conviction, *or an arrest for any crime specified in subparagraph*
16 *(B) of paragraph (1) of subdivision (a),* or is determined unsuitable
17 for employment under Section 1558, the licensee, *special permit*
18 *holder, certificate holder,* or facility shall not incur civil liability
19 or unemployment insurance liability as a result of that denial or
20 termination.

21 (k) ~~(1) The Department of Justice shall coordinate with the~~
22 ~~State Department of Social Services to establish and implement an~~
23 ~~automated live-scan processing system for fingerprints in the~~
24 ~~district offices of the Community Care Licensing Division of the~~
25 ~~State Department of Social Services by July 1, 1999. These~~
26 ~~live-scan processing units shall be connected to the main system~~
27 ~~at the Department of Justice by July 1, 1999, and shall become part~~
28 ~~of that department's pilot project in accordance with its long-range~~
29 ~~plan. The State Department of Social Services may charge a fee for~~
30 ~~the costs of processing a set of live-scan fingerprints.~~

31 ~~(2) The Department of Justice shall provide a report to the~~
32 ~~Senate and Assembly fiscal committees, the Assembly Human~~
33 ~~Services Committee, and to the Senate Health and Human~~
34 ~~Services Committee by April 15, 1999, regarding the completion~~
35 ~~of backlogged criminal record clearance requests for all facilities~~
36 ~~licensed by the State Department of Social Services and the~~
37 ~~progress on implementing the automated live-scan processing~~
38 ~~system in the two district offices pursuant to paragraph (1).~~

39 ~~(l) Amendments to this section made in the 1999 portion of the~~
40 ~~1999-2000 Regular Session shall be implemented commencing 60~~



1 ~~days after the effective date of the act amending this section in the~~
2 ~~1999 portion of the 1999–2000 Regular Session, except that those~~
3 ~~provisions for the submission of fingerprints for searching the~~
4 ~~records of the Federal Bureau of Investigation shall be~~
5 ~~implemented 90 days after the effective date of that act.~~

6 SEC. 2. Section 1568.09 of the Health and Safety Code is
7 amended to read:

8 1568.09. It is the intent of the Legislature in enacting this
9 section to require the fingerprints of those individuals whose
10 contact with residents of residential care facilities for persons with
11 a chronic, life-threatening illness may pose a risk to the residents’
12 health and safety.

13 Therefore, the Legislature supports the use of the fingerprint
14 live-scan technology, as identified in the long-range plan of the
15 Department of Justice for fully automating the processing of
16 fingerprints and other data by the year 1999, otherwise known as
17 the California Crime Information Intelligence System (CAL-CII),
18 to be used for applicant fingerprints. It is the intent of the
19 Legislature, in enacting this section, to require the fingerprints of
20 those individuals whose contact with community care clients may
21 pose a risk to the clients’ health and safety.

22 (a) (1) Before issuing a license to any person or persons to
23 operate or manage a residential care facility, *and before any*
24 *person specified in subdivision (b) who is not exempted from*
25 *fingerprinting is employed by, resides at, or is present in a*
26 *residential care facility for persons, with a chronic,*
27 *life-threatening illness, the department shall secure from an*
28 *appropriate law enforcement agency a criminal record history*
29 *information to determine whether the applicant or any other*
30 *person specified in subdivision (b) who is not exempted from*
31 *fingerprinting has ever been convicted any of the following:*

32 (A) A conviction of a crime other than a minor traffic violation
33 ~~or arrested.~~

34 (B) An arrest for any crime specified in Section 290 of the
35 Penal Code, for violating Section 245 or 273.5 of the Penal Code,
36 for violating subdivision (b) of Section 273a of the Penal Code, or,
37 prior to January 1, 1994, paragraph (2) of Section 273a of the Penal
38 Code, ~~or for.~~

39 (C) A conviction of any crime for which the person has not been
40 exonerated and for which the department ~~cannot~~ may not grant an



1 exemption if the person was convicted and the person has not been
2 exonerated from disqualification pursuant to subdivision (f).

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

6 (3) The following shall apply to the criminal record
7 information:

8 (A) If the ~~State Department of Social Services~~ department
9 finds that the applicant or any other person specified in subdivision
10 (b) *who is not exempted from fingerprinting* has been convicted of
11 a crime, other than a minor traffic violation, *or arrested for a crime*
12 *specified in subparagraph (B) of paragraph (1), subject to*
13 *subdivision (e)*, the application shall be denied, unless the director
14 grants an exemption from disqualification pursuant to subdivision
15 (f).

16 (B) If the ~~State Department of Social Services~~ department finds
17 that the applicant, or any other person specified in subdivision (b)
18 *who is not exempted from fingerprinting* is awaiting trial for a
19 crime other than a minor traffic violation, the ~~State Department of~~
20 ~~Social Services~~ department may cease processing the application
21 until the conclusion of the trial *or other deposition of the case*.

22 (C) If no criminal ~~record~~ history information has been
23 recorded, the Department of Justice shall provide the applicant and
24 the State Department of Social Services with a statement of that
25 fact.

26 (D) If the State Department of Social Services finds after
27 licensure that the licensee, or any other person specified in
28 ~~paragraph (2) of~~ subdivision (b) *who is not exempted from*
29 *fingerprinting*, has been convicted of a crime other than a minor
30 traffic violation, *or arrested for a crime specified in subparagraph*
31 *(B) of paragraph (1), subject to subdivision (e)*, the license may be
32 revoked, unless the director grants an exemption pursuant to
33 subdivision (f).

34 (E) ~~An~~ *In addition to the criminal records search required by*
35 *this subdivision, an applicant and any other person specified in*
36 ~~subdivision (b) for licensure~~ shall submit to the Department of
37 Justice a second set of fingerprints for the purpose of searching the
38 records of the Federal Bureau of Investigation, ~~in addition to the~~
39 ~~search required by this subdivision~~. If an applicant meets all other
40 conditions for licensure, except *for the State Department of Social*



1 *Services' receipt of the Federal Bureau of Investigation's criminal*
2 *history information for the applicant and persons listed in*
3 *subdivision (b), the department may issue a license if the applicant*
4 *and each person described by subdivision (b) has signed and*
5 *submitted a statement declaration, under penalty of perjury, that*
6 *he or she has never been convicted of a crime in the United States,*
7 *other than a traffic infraction as defined in punishable pursuant to*
8 *paragraph (1) of subdivision (a) of Section 42001 of the Vehicle*
9 *Code, or arrested for a crime specified in subparagraph (B) of*
10 *paragraph (1). If, after licensure, the department determines,*
11 *based on the results from the Federal Bureau of Investigation's*
12 *criminal record search, that the licensee has a conviction for any*
13 *crime other than a minor traffic violation, or has been arrested for*
14 *a crime specified in subparagraph (B) of paragraph (1), subject*
15 *to subdivision (e), the department may the revoke the license*
16 *pursuant to Section 1568.082. The department may also suspend*
17 *the license pending an administrative hearing pursuant to Section*
18 *1568.082.*

19 *(F) In addition to the criminal records search required by this*
20 *subdivision, each person specified in subdivision (b) who is not*
21 *exempted from fingerprinting shall submit a second set of*
22 *fingerprints to the Department of Justice for the purpose of*
23 *searching the criminal records of the Federal Bureau of*
24 *Investigation for records for that person. If any person specified in*
25 *subdivision (b) who is not exempted from fingerprinting obtains*
26 *either a criminal record clearance from the Department of Justice*
27 *or an exemption from disqualification pursuant to subdivision (f)*
28 *from the State Department of Social Services pending the*
29 *department's receipt of the Federal Bureau of Investigation's*
30 *criminal history information for the person, the department may*
31 *allow that person to be employed by, reside at, or be present in, the*
32 *residential care facility if the person has signed and submitted to*
33 *the department a declaration, under penalty of perjury, that he or*
34 *she has never been convicted of a crime in the United States, other*
35 *than a traffic infraction punishable pursuant to paragraph (1) of*
36 *subdivision (a) of Section 42001 of the Vehicle Code or the crime*
37 *for which the exemption from disqualification was granted, or*
38 *arrested for any crime specified in subparagraph (B) of paragraph*
39 *(1). If, after obtaining a criminal record clearance or exemption*
40 *from disqualification pursuant to subdivision (f) for a person*



1 *specified in subdivision (b) who is not exempted from*
2 *fingerprinting, the department determines, based on the results*
3 *from the Federal Bureau of Investigation's criminal record search,*
4 *that the person has a conviction for any crime other than a minor*
5 *traffic violation, or has been arrested for a crime specified in*
6 *subparagraph (B) of paragraph (1), subject to subdivision (e), the*
7 *department shall determine if the person should be removed or*
8 *excluded, or both, from the facility pursuant to paragraph (4) of*
9 *subdivision (c) until a decision on the exemption from*
10 *disqualification is rendered.*

11 (G) If, after licensure, the department determines that the
12 licensee or person specified in subdivision (b) *who is not exempted*
13 *from fingerprinting* has a ~~criminal record~~ conviction of an offense
14 *other than a minor traffic violation, or a record of arrest for any*
15 *crime specified in subparagraph (B) of paragraph (1), subject to*
16 *subdivision (e), the license may be revoked pursuant to*
17 *subdivision (a) of Section ~~1568.82~~ 1568.082.* The department
18 may also suspend the license pending an administrative hearing
19 pursuant to subdivision (b) of Section ~~1568.82~~ 1568.082.

20 (b) In addition to the applicant, the provisions of this section
21 shall be applicable to criminal convictions *and arrests* of the
22 following persons:

23 (1) Adults responsible for administration or direct supervision
24 of staff of the facility.

25 (2) Any person, other than a resident, residing in the facility.

26 (3) Any person who provides resident 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 persons with chronic, life-threatening
37 illness. The facility shall maintain the copy of the certification on
38 file as long as care is being provided by the certified nurse assistant
39 or certified home health aide at the facility. Nothing in this
40 paragraph restricts the right of the department to exclude a



1 certified nurse assistant or certified home health aide from a
2 licensed residential care facility for persons with chronic,
3 life-threatening illness pursuant to Section 1568.092.

4 (4) (A) Any staff person, volunteer, or employee who has
5 contact with the residents.

6 (B) A volunteer shall be exempt from the requirements of this
7 subdivision if he or she is a relative, significant other, or close
8 friend of a client receiving care in the facility and the volunteer
9 does not provide direct care and supervision of residents. A
10 volunteer who provides direct care and supervision shall be
11 exempt if the volunteer is a resident's spouse, significant other,
12 close friend, or family member and provides direct care and
13 supervision to that resident only at the request of the resident. The
14 department may define in regulations persons similar to those
15 described in this subparagraph who may be exempt from the
16 requirements of this subdivision.

17 (5) If the applicant is a firm, partnership, association, or
18 corporation, the chief executive officer or other person serving in
19 that capacity.

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

26 (c) (1) (A) ~~Subsequent to initial licensure, any~~ Any person
27 specified in subdivision (b) ~~and who is not exempted from~~
28 fingerprinting shall, ~~as a condition to employment, residence, or~~
29 ~~presence in a residential care facility,~~ *obtain either a criminal*
30 *record clearance from the Department of Justice or an exemption*
31 *from disqualification pursuant to subdivision (f) from the State*
32 *Department of Social Services prior to his or her initial presence*
33 *in a residential care facility. Any person specified in subdivision*
34 *(b) who is not exempted from fingerprinting shall be fingerprinted*
35 *and shall sign a declaration, under penalty of perjury, regarding*
36 *any prior criminal convictions or any arrest for any crime specified*
37 *in subparagraph (B) of paragraph (1) of subdivision (a). The*
38 *licensee shall submit these fingerprints to the Department of*
39 *Justice, along with a second set of fingerprints, for the purpose of*
40 *searching the records of the Federal Bureau of Investigation, or to*



1 shall comply with paragraph (1) of subdivision (g), ~~prior to the~~
2 ~~person's employment, residence, or initial presence in the~~
3 ~~residential care facility.~~

4 (B) These fingerprints shall be ~~on a card provided in a form~~
5 *required* by the State Department of Social Services for the
6 purpose of obtaining a permanent set of fingerprints and submitted
7 to the Department of Justice by the licensee or sent by electronic
8 transmission in a manner approved by the State Department of
9 Social Services. *A licensee's failure to prohibit the initial presence*
10 *in a facility of any person specified in subdivision (b) who is not*
11 *exempted from fingerprinting and who has not received either a*
12 *criminal record clearance or an exemption from disqualification*
13 *pursuant to subdivision (f) shall result in the citation of a*
14 *deficiency and the immediate assessment of civil penalties, by the*
15 *State Department of Social Services and against the licensee, in*
16 *the amount of one hundred dollars (\$100) per violation per day,*
17 *and also shall be grounds for disciplining the licensee pursuant to*
18 *Section 1550. A licensee's failure to submit fingerprints to the*
19 *Department of Justice, or to comply with paragraph (1) of*
20 *subdivision (g), as required in this section, shall result in the*
21 *citation of a deficiency and an immediate assessment of civil*
22 *penalties, by the State Department of Social Services and against*
23 *the licensee, in the amount of one hundred dollars (\$100) per*
24 *violation per day, and shall be grounds for disciplining the licensee*
25 *pursuant to Section 1568.082. The State Department of Social*
26 *Services department may assess civil penalties against the*
27 *licensee for continued violations as allowed in Section 1568.0822.*
28 *The fingerprints shall then be submitted to the State Department*
29 *of Social Services Justice for processing. The licensee shall*
30 *maintain and make available for inspection documentation of the*
31 *individual's clearance or exemption.*

32 (2) (A) ~~Paragraph (1) shall cease to be implemented when the~~
33 ~~State Department of Social Services adopts emergency regulations~~
34 ~~pursuant to Section 1522.04, and shall become inoperative when~~
35 ~~those regulations become final.~~

36 (B) ~~A violation of the regulations adopted pursuant to Section~~
37 ~~1522.04 shall result in the citation of a deficiency and an~~
38 ~~immediate assessment of civil penalties, by the State Department~~
39 ~~of Social Services and against the licensee, in the amount of one~~
40 ~~hundred dollars (\$100) per violation per day and shall be grounds~~



1 *for disciplining the licensee pursuant to Section 1568.082. The*
2 *department may also assess civil penalties for continued violations*
3 *as permitted by Section 1568.0822.*

4 (3) Within 14 calendar days of the receipt of the fingerprints,
5 the Department of Justice shall notify the State Department of
6 Social Services of the criminal ~~record~~ *history* information, as
7 provided for in this subdivision. If no criminal ~~record~~ *history*
8 information has been recorded, the Department of Justice shall
9 provide the licensee and the State Department of Social Services
10 with a statement of that fact within 14 calendar days of receipt of
11 the fingerprints. If new fingerprints are required for processing,
12 the Department of Justice shall, within 14 calendar days from the
13 date of receipt of the fingerprints, notify the licensee that the
14 fingerprints ~~were illegible. When live scan technology is~~
15 ~~operational, as defined in Section 1522.04, the~~ *are required. The*
16 Department of Justice shall notify the department, as required by
17 that section, and shall notify the licensee by mail within 14 days
18 of electronic transmission of the fingerprints to the Department of
19 Justice, if the person has no criminal history record.

20 (4) Except for persons specified in ~~paragraph (2) of~~ subdivision
21 *(b) as exempt from the criminal record clearance requirement, the*
22 licensee shall endeavor to ascertain the previous employment
23 history of persons required to be fingerprinted under ~~this~~
24 subdivision *(b)*. If it is determined by the State Department of
25 Social Services, on the basis of the fingerprints submitted to the
26 Department of Justice, that *subsequent to obtaining a criminal*
27 *record clearance or exemption from disqualification pursuant to*
28 *subdivision (f), the person has been convicted of a sex offense*
29 *against a minor, an offense specified in Section 243.4, 273a, 273d,*
30 *273g, or 368 of the Penal Code, or a felony, or has been arrested*
31 *for any crime specified in subparagraph (B) of paragraph (1) of*
32 *subdivision (a), subject to subdivision (e), the department shall*
33 *notify the licensee to act immediately to terminate the person's*
34 *employment, remove the person from the residential care facility,*
35 *or bar the person from entering the residential care facility, as*
36 *appropriate. The department may subsequently grant an*
37 *exemption from disqualification pursuant to subdivision (f). If the*
38 *conviction was for another crime, except a minor traffic violation,*
39 *the licensee shall, upon notification by the department, act*
40 *immediately to either (A) terminate the person's employment,*



1 remove the person from the residential care facility, or bar the
2 person from entering the residential care facility, *as appropriate*;
3 or ~~(2)~~ (B) seek an exemption *from disqualification* pursuant to
4 subdivision (f). The department shall determine if the person shall
5 be allowed to remain in the facility until a decision on the
6 exemption *from disqualification* is rendered. A licensee's failure
7 to comply with the department's prohibition of employment,
8 contact with clients, or presence in the facility as required by this
9 paragraph *shall result in a citation of a deficiency and an*
10 *immediate assessment of civil penalties, by the department and*
11 *against the licensee, in the amount of one hundred dollars (\$100)*
12 *per violation per day, and shall be grounds for disciplining the*
13 licensee pursuant to Section 1568.082.

14 (5) The department may issue an exemption on its own motion
15 pursuant to subdivision (f) if the person's criminal history
16 indicates that the person is of good character based on the age,
17 seriousness, and frequency of the conviction or convictions. The
18 department, in consultation with interested parties, shall develop
19 regulations to establish the criteria to grant an exemption pursuant
20 to this paragraph.

21 ~~(6) Concurrently with notifying the licensee pursuant to~~
22 ~~paragraph (4), the department shall notify the affected individual~~
23 ~~of his or her right to seek an exemption pursuant to subdivision (f).~~
24 ~~The individual may seek an exemption only if the licensee~~
25 ~~terminates the person's employment or removes the person from~~
26 ~~the facility after receiving notice from the department pursuant to~~
27 ~~paragraph (4). Only an applicant for licensure or a licensee may~~
28 ~~request an exemption from disqualification pursuant to~~
29 ~~subdivision (f) on behalf of an individual specified in subdivision~~
30 ~~(b) who is not exempt from fingerprinting.~~

31 (d) (1) For purposes of this section or any other provision of
32 this chapter, a conviction means a plea or verdict of guilty or a
33 conviction following a plea of nolo contendere. Any action ~~which~~
34 *that* the department is permitted to take following the
35 establishment of a conviction may be taken when the time for
36 appeal has elapsed, ~~or~~ *when* the judgment of conviction has been
37 affirmed on appeal, or when an order granting probation is made
38 suspending the imposition of the sentence, notwithstanding a
39 subsequent order pursuant to Sections 1203.4 and 1203.4a of the
40 Penal Code permitting that person to withdraw his or her plea of



1 guilty and to enter a plea of not guilty, setting aside the verdict of
2 guilty, or dismissing the accusation, information, or indictment.
3 For purposes of this chapter, the record of a conviction, or a copy
4 thereof certified by the clerk of the court or by a judge of the court
5 in which the conviction occurred, shall be conclusive evidence of
6 the conviction. For purposes of this section or any other provision
7 of this chapter, the arrest disposition report certified by the
8 Department of Justice, or documents admissible in a criminal
9 action pursuant to Section 969b of the Penal Code, shall be prima
10 facie evidence of the conviction, notwithstanding any other
11 provision of law prohibiting the admission of these documents in
12 a civil or administrative action.

13 (2) For purposes of this section or any other provision of this
14 chapter, the department shall consider criminal convictions from
15 another state or federal court, *or arrests from another state or by*
16 *any federal agency*, as if the criminal offense was committed in this
17 state.

18 (e) The State Department of Social Services shall not use a
19 record of arrest to deny, revoke, or terminate any application,
20 license, employment, or residence unless the department
21 investigates the incident and secures evidence, whether or not
22 related to the incident of arrest, that is admissible in an
23 administrative hearing to establish conduct by the person that may
24 pose a risk to the health and safety of any person who is or may
25 become a client. ~~The State Department of Social Services~~
26 *department* is authorized to obtain any arrest or conviction records
27 or reports from any law enforcement agency as necessary to the
28 performance of its duties to inspect, license, and investigate
29 ~~community residential care facilities for persons with a chronic,~~
30 *life-threatening illness* and individuals associated with a
31 ~~community residential care facility for persons with a chronic,~~
32 *life-threatening illness*.

33 (f) (1) After review of the record, the director may grant an
34 exemption from disqualification for a license as specified in
35 ~~paragraphs (1) and (4) of subdivision (a), or for employment,~~
36 ~~residence, or presence in a residential care facility as specified in~~
37 ~~paragraphs (4), (5), and (6) of subdivision (c),~~ if the director has
38 substantial and convincing evidence to support a reasonable belief
39 that the applicant ~~and the or other person convicted of, or arrested~~
40 ~~for; the crime, if other than the applicant, are~~ *is* of such good



1 character as to justify issuance of the license ~~or special permit~~ or
2 *the granting of an exemption for purposes of subdivision (c)*
3 *pursuant to this subdivision.* However, no exemption shall be
4 granted pursuant to this subdivision if the conviction was for any
5 of the following offenses:

6 (A) An offense specified in Section 220, *subdivision (b) of*
7 *Section 237, Section 243.4, or Section 246, Section 264.1,*
8 ~~*subdivision (a) of Section 266a, Section 266e, Section 273a or,*~~
9 ~~*prior to January 1, 1994, paragraph (1) of Section 273a, Section,*~~
10 ~~*Section 273ab, Section 273d, subdivision (e) of Section 273.5,*~~
11 ~~*Section 288, or Section 289, subdivision (a) of Section 290, or the*~~
12 ~~*Penal Code, any conviction for which the person is required to*~~
13 ~~*register as a sex offender pursuant to Section 290 of the Penal*~~
14 ~~*Code, Section 368, or subdivision (b) of Section 417, of the Penal*~~
15 ~~*Code, or was a conviction of another any crime against an*~~
16 ~~*individual specified in subdivision (c) of Section 667.5 of the*~~
17 ~~*Penal Code, or any crime of violence specified in any regulation.*~~

18 (B) A felony offense specified in Section 729 of the Business
19 and Professional Code ~~or Section 206 or in Section 206, Section~~
20 ~~215, subdivision (a) of Section 347, subdivision (b) of Section~~
21 ~~417, or subdivision (a) of Section 451, of the Penal Code.~~

22 (C) *An offense specified in Section 11379.6.*

23 (D) *First degree burglary specified in Sections 459 and 460 of*
24 *the Penal Code.*

25 (2) The department shall not prohibit a person from being
26 employed *by or from* having contact with clients in a facility on
27 the basis of a denied criminal record exemption request or arrest
28 information unless the department complies with the requirements
29 of Section 1568.092.

30 (g) (1) For purposes of compliance with this section, the
31 ~~department~~ *State Department of Social Services* may permit an
32 individual to transfer a current criminal record clearance, as
33 defined in subdivision (a), from one facility to another, as long as
34 the criminal record clearance has been processed through a state
35 licensing district office, and is being transferred to another facility
36 licensed by a state licensing district office. The request shall be in
37 writing to the department, and shall include a copy of the person's
38 driver's license or valid identification card issued by the
39 Department of Motor Vehicles, or a valid photo identification
40 issued by another state or the United States government if the



1 person is not a California resident. Upon request of the licensee,
2 who shall enclose a self-addressed stamped envelope for this
3 purpose, the department shall verify whether the individual has a
4 clearance that can be transferred.

5 (2) The ~~State Department of Social Services~~ *department* shall
6 hold criminal record clearances in its active files for a minimum
7 of two years after ~~an employee~~ *a person* is no longer employed ~~at~~
8 *by, residing at, or present in* a licensed facility in order for the
9 criminal record clearance to be transferred.

10 (h) If a licensee or facility is required by law to deny
11 employment or to terminate employment of any employee based
12 on written notification from the state department that the employee
13 has a prior criminal conviction, or *has an arrest for any crime*
14 *specified in subparagraph (B) of paragraph (1) of subdivision (a),*
15 *or is determined unsuitable for employment under Section*
16 *1568.092,* the licensee or facility shall not incur civil liability or
17 unemployment insurance liability as a result of that denial or
18 termination.

19 (i) ~~(1)~~ The Department of Justice shall charge a fee sufficient
20 to cover its cost in providing services to comply with the 14-day
21 requirement contained in subdivision (c) for provision to the
22 department of criminal record *history* information.

23 ~~(2) Paragraph (1) shall cease to be implemented when the~~
24 ~~department adopts emergency regulations pursuant to Section~~
25 ~~1522.04, and shall become inoperative when permanent~~
26 ~~regulations are adopted under that section.~~

27 ~~(j) Amendments to the provisions of this section made in the~~
28 ~~1998 calendar year shall be implemented commencing 60 days~~
29 ~~after the effective date of the act amending this section in the 1998~~
30 ~~calendar year, except those provisions for the submission of~~
31 ~~fingerprints for searching the records of the Federal Bureau of~~
32 ~~Investigation, which shall be implemented commencing January~~
33 ~~1, 1999.~~

34 SEC. 3. Section 1569.17 of the Health and Safety Code is
35 amended to read:

36 1569.17. The Legislature recognizes the need to generate
37 timely and accurate positive fingerprint identification of
38 applicants as a condition of issuing licenses, permits, or
39 certificates of approval for persons to operate or provide direct
40 care services in a residential care facility for the elderly. The



1 Legislature supports the use of the fingerprint live-scan
2 technology, as identified in the long-range plan of the Department
3 of Justice for fully automating the processing of fingerprints and
4 other data by the year 1999. It is the intent of the Legislature in
5 enacting this section to require the fingerprints of those individuals
6 whose contact with clients of residential care facilities for the
7 elderly may pose a risk to the clients' health and safety.

8 (a) (1) Before issuing a license *or special permit* to any person
9 or persons to operate or manage a residential care facility for the
10 elderly, *and before any person specified in subdivision (b) who is*
11 *not exempted from fingerprinting is employed by, resides at, or is*
12 *present in a residential care facility for the elderly,* ~~the department~~
13 *State Department of Social Services* shall secure from an
14 appropriate law enforcement agency a criminal ~~record~~ *history*
15 *information* to determine whether the applicant or any other
16 person specified in subdivision (b) *who is not exempted from*
17 *fingerprinting* has ~~ever been convicted~~ *any of the following:*

18 (A) A conviction of a crime other than a minor traffic violation
19 ~~or arrested.~~

20 (B) An arrest for any crime specified in Section 290 of the
21 Penal Code, for violating Section 245 or 273.5 of the Penal Code,
22 for violating subdivision (b) of Section 273a of the Penal Code, or,
23 prior to January 1, 1994, paragraph (2) of Section 273a of the Penal
24 Code, ~~or for.~~

25 (C) A conviction of any crime for which *the person has not been*
26 *exonerated and for which the department cannot may not grant an*
27 *exemption if the person was convicted and the person has not been*
28 *exonerated from disqualification pursuant to subdivision (f).*

29 (2) The criminal history information shall include the full
30 criminal record, if any, of those persons; and ~~subsequent~~ *arrest*
31 *information* pursuant to Section 11105.2 of the Penal Code.

32 (3) 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) *who is*
36 *not exempted from fingerprinting* has been convicted of a crime,
37 other than a minor traffic violation, *or arrested for a crime*
38 *specified in subparagraph (B) of paragraph (1), subject to*
39 *subdivision (e),* the application shall be denied, unless the director



1 grants an exemption *from disqualification* pursuant to subdivision
2 (f).

3 (B) If the ~~State Department of Social Services~~ *department* finds
4 that the applicant, or any other person specified in subdivision (b)
5 *who is not exempted from fingerprinting*, is awaiting trial for a
6 crime other than a minor traffic violation, the ~~State Department of~~
7 ~~Social Services~~ *department* may cease processing the application
8 until the conclusion of the trial *or other disposition of the case*.

9 (C) If no criminal ~~record~~ *history* information has been
10 recorded, the Department of Justice shall provide the applicant and
11 the State Department of Social Services with a statement of that
12 fact.

13 (D) If the ~~State Department of Social Services~~ *department*
14 finds after licensure *or the issuance of a special permit* that the
15 licensee, *special permit holder*, or any other person specified in
16 ~~paragraph (2) of~~ subdivision (b) *who is not exempt from*
17 *fingerprinting*, has been convicted of a crime other than a minor
18 traffic violation *or arrested for a crime specified in subparagraph*
19 *(B) of paragraph (1), subject to subdivision (e)*, the license *or*
20 *special permit* may be revoked, unless the director grants an
21 exemption pursuant to subdivision (f).

22 (E) ~~An~~ *In addition to the criminal records search required by*
23 *this subdivision, an applicant and any other person specified in*
24 ~~subdivision (b) for licensure or for a special permit~~ shall submit
25 a second set of fingerprints to the Department of Justice, for the
26 purpose of searching the records of the Federal Bureau of
27 Investigation, ~~in addition to the search required by subdivision (a)~~.
28 If an applicant meets all other conditions for licensure *or for a*
29 *special permit*, except for the State Department of Social Services'
30 receipt of the Federal Bureau of Investigation's criminal history
31 information for the applicant ~~and persons listed in subdivision (b)~~,
32 the department may issue a license *or special permit* if the
33 applicant ~~and each person described by subdivision (b)~~ has signed
34 and submitted a ~~statement~~ *declaration, under penalty of perjury*,
35 that he or she has never been convicted of a crime in the United
36 States, other than a traffic infraction as defined in paragraph (1) of
37 subdivision (a) of Section 42001 of the Vehicle Code, *or arrested*
38 *for a crime specified in subparagraph (B) of paragraph (1)*. If,
39 after licensure *or the issuance of a special permit*, the department
40 determines, *based on the results from the Federal Bureau of*



1 *Investigation's criminal record search that the licensee or person*
2 *specified in subdivision (b) has a criminal record or special permit*
3 *holder has a conviction for any crime other than a minor traffic*
4 *violation, or has been arrested for a crime specified in*
5 *subparagraph (B) of paragraph (1), subject to subdivision (e), the*
6 *department may revoke the license—may be revoked pursuant to*
7 *Section 1569.50. The department may also suspend the license*
8 *pending an administrative hearing pursuant to Sections 1569.50*
9 *and 1569.51.*

10 *(F) In addition to the criminal records search required by this*
11 *subdivision, each person specified in subdivision (b) who is not*
12 *exempted from fingerprinting shall submit a second set of*
13 *fingerprints to the Department of Justice for the purpose of*
14 *searching the criminal records of the Federal Bureau of*
15 *Investigation for records for that person. If any person specified in*
16 *subdivision (b) who is not exempted from fingerprinting obtains*
17 *either a criminal record clearance from the Department of Justice*
18 *or an exemption from disqualification pursuant to subdivision (f)*
19 *from the State Department of Social Services pending the*
20 *department's receipt of the Federal Bureau of Investigation's*
21 *criminal history for the person, the department may allow that*
22 *person to be employed by, to reside at, or to be present in the*
23 *residential care facility for the elderly if the person has signed and*
24 *submitted a declaration, under penalty of perjury, that he or she*
25 *has never been convicted of a crime in the United States, other than*
26 *a minor traffic infraction punishable pursuant to paragraph (1) of*
27 *subdivision (a) of Section 42001 of the Vehicle Code or the crime*
28 *for which the exemption from disqualification was granted, or*
29 *arrested for a crime specified in subparagraph (B) of paragraph*
30 *(1). If after obtaining a criminal record clearance or exemption for*
31 *a person specified in subdivision (b) who is not exempted from*
32 *fingerprinting, the department determines, based on the results*
33 *from the Federal Bureau of Investigation's criminal record search,*
34 *that the person has a conviction for any crime other than a minor*
35 *traffic violation, or has been arrested for a crime specified in*
36 *subparagraph (B) of paragraph (1), subject to subdivision (e), the*
37 *department shall determine if the person should be removed or*
38 *excluded, or both, from the facility pursuant to paragraph (3) of*
39 *subdivision (c) until a decision on the exemption from*
40 *disqualification is rendered.*



1 (G) *If, after licensure or the granting of a special permit, the*
2 *department determines that the licensee, special permit holder, or*
3 *a person specified in subdivision (b) who is not exempted from*
4 *fingerprinting has a conviction of an offense other than a minor*
5 *traffic violation, or a record of arrest for any crime specified in*
6 *subparagraph (B) of paragraph (1), subject to subdivision (e), the*
7 *license may be revoked pursuant to Section 1569.50. The*
8 *department may also suspend the license pending an*
9 *administrative hearing pursuant to Sections 1569.50 and 1569.51.*

10 (b) (1) In addition to the applicant, the provisions of this
11 section shall apply to criminal convictions *and arrests* of the
12 following persons:

13 ~~(1) (A)~~

14 (A) Adults responsible for administration or direct supervision
15 of staff.

16 (B) Any person, other than a client, residing in the facility.
17 Residents of unlicensed independent senior housing facilities that
18 are located in contiguous buildings on the same property as a
19 residential care facility for the elderly shall be exempt from these
20 requirements.

21 (C) Any person who provides client assistance in dressing,
22 grooming, bathing, or personal hygiene. Any nurse assistant or
23 home health aide meeting the requirements of Section 1338.5 or
24 1736.6, respectively, who is not employed, retained, or contracted
25 by the licensee, and who has been certified or recertified on or after
26 July 1, 1998, shall be deemed to meet the criminal record clearance
27 requirements of this section. A certified nurse assistant and
28 certified home health aide who will be providing client assistance
29 and who falls under this exemption shall provide one copy of his
30 or her current certification, prior to providing care, ~~to~~ *at* the
31 residential care facility for the elderly. The facility shall maintain
32 the copy of the certification on file as long as the care is being
33 provided by the certified nurse assistant or certified home health
34 aide at the facility. Nothing in this paragraph restricts the right of
35 the department to exclude a certified nurse assistant or certified
36 home health aide from a licensed residential care facility for the
37 elderly pursuant to Section 1569.58.

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



1 (E) If the applicant is a firm, partnership, association, or
2 corporation, the chief executive officer or other person serving in
3 a similar capacity.

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

10 (2) The following persons are exempt from requirements
11 applicable under paragraph (1):

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

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

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

17 (ii) The volunteer is directly supervised by the licensee, *special*
18 *permit holder*, or a facility employee with a criminal record
19 clearance or exemption.

20 (iii) The volunteer spends no more than 16 hours per week at
21 the facility.

22 (iv) The volunteer does not provide clients with assistance in
23 dressing, grooming, bathing, or personal hygiene.

24 (v) The volunteer is not left alone with clients in care.

25 (C) A third-party contractor retained by the facility if the
26 contractor is not left alone with clients in care.

27 (D) A third-party contractor or other business professional
28 retained by a client and at the facility at the request or by
29 permission of that client. These individuals shall not be left alone
30 with other clients.

31 (E) Licensed or certified medical professionals are exempt
32 from fingerprint and criminal background check requirements
33 imposed by community care licensing. This exemption shall not
34 apply to a person who is a ~~community care~~ *residential care* facility
35 *for the elderly* licensee, *special permit holder*, or an employee of
36 the facility.

37 (F) Employees of licensed home health agencies and members
38 of licensed hospice interdisciplinary teams who have contact with
39 a resident of a residential care facility at the request of the resident
40 or resident's legal decisionmaker are exempt from fingerprint and



1 criminal background check requirements imposed by community
2 care licensing. This exemption shall not apply to a person who is
3 a ~~community care~~ *residential care facility for the elderly* licensee,
4 *special permit holder*, or an employee of the facility.

5 (G) Clergy and other spiritual caregivers who are performing
6 services in common areas of the residential care facility, or who are
7 advising an individual resident at the request of, or with
8 permission of, the resident, are exempt from fingerprint and
9 criminal background check requirements imposed by community
10 care licensing. This exemption shall not apply to a person who is
11 a ~~community~~ *residential care facility for the elderly* licensee,
12 *special permit holder*, or an employee of the facility.

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

15 ~~(I)~~

16 (3) Nothing in ~~this~~ paragraph (2) shall prevent a licensee *or*
17 *special permit holder* from requiring a criminal record clearance
18 of any individual exempt from the requirements of this section,
19 provided that the individual has client contact.

20 (c) (1) (A) ~~Subsequent to initial licensure, any~~ Any person
21 required to be fingerprinted pursuant to subdivision (b) shall, ~~as a~~
22 ~~condition to employment, residence, or presence in a residential~~
23 ~~facility for the elderly, obtain either a criminal record clearance~~
24 ~~from the Department of Justice or an exemption from~~
25 ~~disqualification pursuant to subdivision (f) from the State~~
26 ~~Department of Social Services prior to his or her initial presence~~
27 ~~in a residential care facility for the elderly. Any person specified~~
28 ~~in subdivision (b) who is not exempted from fingerprinting shall be~~
29 fingerprinted and shall sign a declaration, under penalty of
30 perjury, regarding any prior criminal ~~convictions~~ conviction or
31 any arrest for any crime specified in subparagraph (B) of
32 paragraph (1) of subdivision (a). The licensee *or special permit*
33 *holder* shall submit these fingerprints, along with a second set of
34 fingerprints for the purpose of searching the records of the Federal
35 Bureau of Investigation, to the Department of Justice, or ~~to~~ shall
36 comply with paragraph (1) of subdivision (g) ~~prior to the person's~~
37 ~~employment, residence, or initial presence in the residential care~~
38 ~~facility for the elderly.~~

39 (B) These fingerprints shall be ~~on a fingerprint card provided~~
40 *in a form required* by the State Department of Social Services, or



1 sent by electronic transmission in a manner approved by the State
2 Department of Social Services and the Department of Justice and
3 submitted to the Department of Justice by the licensee. *A licensee's*
4 *or special permit holder's failure to prohibit the initial presence in*
5 *a facility of any person specified in subdivision (b) who is not*
6 *exempted from fingerprinting and who has not received either a*
7 *criminal record clearance or an exemption from disqualification*
8 *pursuant to subdivision (f) shall result in the citation of a*
9 *deficiency and the immediate assessment of civil penalties, by the*
10 *State Department of Social Services and against the licensee or*
11 *special permit holder, in the amount of one hundred dollars (\$100)*
12 *per violation per day, and shall also be grounds for disciplining the*
13 *licensee pursuant to Section 1569.50. A licensee's or special*
14 *permit holder's failure to submit fingerprints to the Department of*
15 *Justice, or to comply with paragraph (1) of subdivision (g), as*
16 *required in this section, shall result in the citation of a deficiency*
17 *and an immediate assessment of civil penalties, by the State*
18 *Department of Social Services and against the licensee or special*
19 *permit holder, in the amount of one hundred dollars (\$100) per*
20 *violation per day, and shall be grounds for disciplining the licensee*
21 *pursuant to Section 1569.50. The State Department of Social*
22 *Services department may also assess civil penalties for continued*
23 *violations as permitted by Section 1569.49. The licensee shall then*
24 *submit these fingerprints to the State Department of Social*
25 *Services for processing. Documentation of the individual's*
26 *clearance or exemption shall be maintained by the licensee or*
27 *special permit holder and shall be available for inspection. When*
28 *live-scan technology is operational, as defined in Section 1522.04,*
29 *the The Department of Justice shall notify the department, as*
30 *required by that section, and notify the licensee or special permit*
31 *holder by mail within 14 days of electronic transmission of the*
32 *fingerprints to the Department of Justice, if the person has no*
33 *criminal record history information. A violation of the regulations*
34 *adopted pursuant to Section 1522.04 shall result in the citation of*
35 *a deficiency and an immediate assessment of civil penalties, by the*
36 *State Department of Social Services and against the licensee or*
37 *special permit holder, in the amount of one hundred dollars (\$100)*
38 *per violation per day, and shall be grounds for disciplining the*
39 *licensee pursuant to Section 1569.50. The department may also*



1 assess civil penalties for continued violations as permitted by
2 Section 1569.49.

3 (2) Within 14 calendar days of the receipt of the fingerprints,
4 the Department of Justice shall notify the State Department of
5 Social Services of the criminal record information, as provided for
6 in this subdivision. If no criminal ~~record~~ *history* information has
7 been recorded, the Department of Justice shall provide the licensee
8 *or special permit holder* and the State Department of Social
9 Services with a statement of that fact within 14 calendar days of
10 receipt of the fingerprints. If new fingerprints are required for
11 processing, the Department of Justice shall, within 14 calendar
12 days from the date of receipt of the fingerprints, notify the licensee
13 *or special permit holder* that the fingerprints ~~were illegible~~ *are*
14 *required*.

15 (3) Except for persons specified in ~~paragraph (2)~~ of subdivision
16 (b) *as exempt from the criminal record clearance requirement*, the
17 licensee *or special permit holder* shall endeavor to ascertain the
18 previous employment history of persons required to be
19 fingerprinted under ~~this~~ subdivision (b). If the State Department
20 of Social Services determines, on the basis of the fingerprints
21 submitted to the Department of Justice, that *subsequent to*
22 *obtaining either a criminal record clearance or exemption from*
23 *disqualification pursuant to subdivision (f)*, the person has been
24 convicted of a sex offense against a minor, an offense specified in
25 Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a
26 felony, *or has been arrested for any crime specified in*
27 *subparagraph (B) of paragraph (1) of subdivision (a), subject to*
28 *subdivision (e)*, the State Department of Social Services shall
29 notify the licensee *or special permit holder* in writing within 15
30 calendar days of the receipt of the notification from the
31 Department of Justice to act immediately to terminate the person's
32 employment, remove the person from the residential care facility
33 for the elderly, or bar the person from entering the residential care
34 facility for the elderly, *as appropriate*. ~~The State Department of~~
35 ~~Social Services~~ *department* may subsequently grant an exemption
36 pursuant to subdivision (f). If the conviction was for another
37 crime, except a minor traffic violation, the licensee *or special*
38 *permit holder* shall, upon notification by the ~~State Department of~~
39 ~~Social Services~~ *department*, act immediately to either ~~(1)~~ (A)
40 terminate the person's employment, remove the person from the



1 residential care facility for the elderly, or bar the person from
2 entering the residential care facility for the elderly, *as*
3 *appropriate*; or ~~(2) (B)~~ seek an exemption pursuant to subdivision
4 (f). The department shall determine if the person shall be allowed
5 to remain in the facility until a decision on the exemption is
6 rendered by the department. A licensee's *or special permit*
7 *holder's* failure to comply with the department's prohibition of
8 employment, contact with clients, or presence in the facility as
9 required by this paragraph shall *result in a citation of a deficiency*
10 *and an immediate assessment of civil penalties, by the department*
11 *and against the licensee or special permit holder, in the amount of*
12 *one hundred dollars (\$100) per violation per day and shall be*
13 *grounds for disciplining the licensee pursuant to Section 1569.50.*

14 (4) The department may issue an exemption on its own motion
15 pursuant to subdivision (f) if the person's criminal history
16 indicates that the person is of good character based on the age,
17 seriousness, and frequency of the conviction or convictions. The
18 department, in consultation with interested parties, shall develop
19 regulations to establish the criteria to grant an exemption *from*
20 *disqualification* pursuant to this paragraph.

21 ~~(5) Concurrently with notifying the licensee pursuant to~~
22 ~~paragraph (4), the department shall notify the affected individual~~
23 ~~of his or her right to seek an exemption pursuant to subdivision (f).~~
24 ~~The individual may seek an exemption only if the licensee~~
25 ~~terminates the person's employment or removes the person from~~
26 ~~the facility after receiving notice from the department pursuant to~~
27 ~~paragraph (4). Only an applicant for licensure or a special permit~~
28 ~~or a licensee or special permit holder may request an exemption~~
29 ~~pursuant to subdivision (f) on behalf of an individual specified in~~
30 ~~subdivision (b) who is not exempt from fingerprinting.~~

31 (d) (1) For purposes of this section or any other provision of
32 this chapter, a conviction means a plea or verdict of guilty or a
33 conviction following a plea of nolo contendere. Any action that the
34 department is permitted to take following the establishment of a
35 conviction may be taken when the time for appeal has elapsed, ~~or~~
36 *when* the judgment of conviction has been affirmed on appeal, or
37 when an order granting probation is made suspending the
38 imposition of the sentence, notwithstanding a subsequent order
39 pursuant to the provisions of Sections 1203.4 and 1203.4a of the
40 Penal Code permitting a person to withdraw his or her plea of



1 guilty and to enter a plea of not guilty, or setting aside the verdict
2 of guilty, or dismissing the accusation, information, or indictment.
3 For purposes of this section or any other provision of this chapter,
4 the record of a conviction, or a copy thereof certified by the clerk
5 of the court or by a judge of the court in which the conviction
6 occurred, shall be conclusive evidence of the conviction. For
7 purposes of this section or any other provision of this chapter, the
8 arrest disposition report certified by the Department of Justice or
9 documents admissible in a criminal action pursuant to Section
10 969b of the Penal Code shall be prima facie evidence of the
11 conviction, notwithstanding any other provision of law
12 prohibiting the admission of these documents in a civil or
13 administrative action.

14 (2) For purposes of this section or any other provision of this
15 chapter, the department shall consider criminal convictions from
16 another state or federal court *or arrests from another state or by*
17 *any federal agency*, as if the criminal offense was committed in this
18 state.

19 (e) The State Department of Social Services shall not use a
20 record of arrest to deny, revoke, or terminate any application,
21 license, *special permit*, employment, or residence unless the
22 department investigates the incident and secures evidence,
23 whether or not related to the incident of arrest, that is admissible
24 in an administrative hearing to establish conduct by the person that
25 may pose a risk to the health and safety of any person who is or may
26 become a client. ~~The State Department of Social Services~~
27 *department* is authorized to obtain any arrest or conviction records
28 or reports from any law enforcement agency as necessary to the
29 performance of its duties to inspect, license, *issue a special permit*
30 *for*, and investigate ~~community residential care facilities for the~~
31 *elderly* and individuals associated with a ~~community residential~~
32 *care facility for the elderly*.

33 (f) (1) After review of the record, the director may grant an
34 exemption from disqualification for a license as specified in
35 ~~paragraphs (1) and (4) of subdivision (a), or for employment,~~
36 ~~residence, or presence in a residential care facility for the elderly~~
37 ~~as specified in paragraphs (4), (5), and (6) of subdivision (c), if the~~
38 ~~director has substantial and convincing evidence to support a~~
39 ~~reasonable belief that the applicant and the or other person~~
40 ~~convicted of, or arrested for, the crime, if other than the applicant,~~



1 ~~are~~ is of such good character as to justify issuance of the license
2 or special permit or granting an exemption ~~for purposes of~~
3 ~~subdivision (e) pursuant to this subdivision.~~ However, no
4 exemption shall be granted pursuant to this subdivision if the
5 conviction was for any of the following offenses:

6 (A) An offense specified in Section 220, *subdivision (b) of*
7 *Section 237, Section 243.4, or Section 246, Section 264.1,*
8 ~~subdivision (a) of Section 266a, Section 266e, Section 273a or,~~
9 ~~prior to January 1, 1994, paragraph (1) of Section 273a, Section,~~
10 ~~Section 273ab, Section 273d, subdivision (e) of Section 273.5,~~
11 ~~Section 288, or Section 289, subdivision (a) of Section 290, or the~~
12 ~~Penal Code, any conviction for which the person is required to~~
13 ~~register as a sex offender pursuant to Section 290 of the Penal~~
14 ~~Code, Section 368, or subdivision (b) of Section 417, of the Penal~~
15 ~~Code, or was a conviction of another any crime against an~~
16 individual specified in subdivision (c) of Section 667.5 of the
17 Penal Code, *or any crime of violence specified in any regulation.*

18 (B) A felony offense specified in Section 729 of the Business
19 and Professions Code or Section 206 or 215, subdivision (a) of
20 Section 347, ~~subdivision (b) of Section 417,~~ or subdivision (a) of
21 Section 451 of the Penal Code.

22 (C) *An offense specified in Section 11379.6.*

23 (D) *First degree burglary specified in Sections 459 and 460 of*
24 *the Penal Code.*

25 (2) The director shall notify in writing the licensee, *special*
26 *permit holder,* ~~or the~~ applicant of his or her decision within 60 days
27 of receipt of all information from the applicant and other sources
28 determined necessary by the director for the rendering of a
29 decision pursuant to this subdivision.

30 (3) The department shall not prohibit a person from being
31 employed or having contact with clients in a facility on the basis
32 of a denied criminal record exemption request or arrest
33 information unless the department complies with the requirements
34 of Section 1569.58.

35 (g) (1) For purposes of compliance with this section, the
36 ~~department~~ *State Department of Social Services* may permit an
37 individual to transfer a current criminal record clearance, as
38 defined in subdivision (a), from one facility to another, as long as
39 the criminal record clearance has been processed through a state
40 licensing district office, and is being transferred to another facility



1 licensed by a state licensing district office. The request shall be
2 submitted in writing to the department, and shall include a copy of
3 the person's driver's license or valid identification card issued by
4 the Department of Motor Vehicles, or a valid photo identification
5 issued by another state or the United States government if the
6 person is not a California resident. Upon request of the licensee *or*
7 *special permit holder*, who shall enclose a self-addressed stamped
8 envelope for this purpose, the department shall verify whether the
9 individual has a clearance that can be transferred.

10 (2) The ~~State Department of Social Services~~ *department* shall
11 hold criminal record clearances in its active files for a minimum
12 of two years after ~~an employee~~ *a person* is no longer employed ~~at~~
13 *by, residing at, or present in* a licensed facility in order for the
14 criminal record clearances to be transferred under this section.

15 (h) If a licensee, *special permit holder*, or facility is required by
16 law to deny employment or to terminate employment of any
17 employee based on written notification from the department that
18 the employee has a prior criminal conviction, *or an arrest for any*
19 *crime specified in subparagraph (B) of paragraph (1) of*
20 *subdivision (a)*, or is determined unsuitable for employment under
21 Section 1569.58, the licensee, *special permit holder*, or facility
22 shall not incur civil liability or unemployment insurance liability
23 as a result of that denial or termination.

24 ~~(i) Amendments to the provisions of this section made in the~~
25 ~~1998 calendar year shall be implemented commencing 60 days~~
26 ~~after the effective date of the act amending this section in the 1998~~
27 ~~calendar year, except those provisions for the submission of~~
28 ~~fingerprints for searching the records of the Federal Bureau of~~
29 ~~Investigation, which shall be implemented commencing on~~
30 ~~January 1, 1999.~~

31 SEC. 4. Section 1596.871 of the Health and Safety Code is
32 amended to read:

33 1596.871. The Legislature recognizes the need to generate
34 timely and accurate positive fingerprint identification of
35 applicants as a condition of issuing licenses, permits, or
36 certificates of approval for persons to operate or provide direct
37 care services in a child care center or family child care home.
38 Therefore, the Legislature supports the use of the fingerprint
39 live-scan technology, as defined in the long-range plan of the
40 Department of Justice for fully automating the processing of



1 fingerprints and other data by the year 1999, otherwise known as
2 the California Crime Information Intelligence System (CAL-CII),
3 to be used for applicant fingerprints. It is the intent of the
4 Legislature in enacting this section to require the fingerprints of
5 those individuals whose contact with child day care facility clients
6 may pose a risk to the children's health and safety.

7 (a) (1) Before issuing a license or special permit to any person
8 to operate or manage a *child day care facility or family day care*
9 *home licensed pursuant to this chapter, and before any person*
10 *specified in subdivision (b) who is not exempted from*
11 *fingerprinting is employed by, resides at, or is present in a child*
12 *day care facility or family day care home, the department shall*
13 *secure from an appropriate law enforcement agency a criminal*
14 *record history information to determine whether the applicant or*
15 *any other person specified in subdivision (b) who is not exempted*
16 *from fingerprinting has ever been convicted any of the following:*

17 (A) A conviction of a crime other than a minor traffic violation
18 ~~or arrested.~~

19 (B) An arrest for any crime specified in Section 290 of the
20 Penal Code, for violating Section 245 or 273.5 of the Penal Code,
21 for violating subdivision (b) of Section 273a of the Penal Code, or,
22 prior to January 1, 1994, paragraph (2) of Section 273a of the Penal
23 Code, ~~or for.~~

24 (C) A conviction of any crime for which the person has not
25 been exonerated for which the department ~~cannot~~ may not grant an
26 exemption if the person was convicted and the person has not been
27 ~~exonerated~~ from disqualification pursuant to subdivision (f).

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

31 (3) No fee shall be charged by the Department of Justice or the
32 department for the fingerprinting of an applicant who will serve
33 six or fewer children or any family day care *home* applicant for a
34 license *or special permit*, or for obtaining a criminal record of an
35 applicant pursuant to this section.

36 (4) The following shall apply to the criminal record
37 information:

38 (A) If the State Department of Social Services finds that the
39 applicant or any other person specified in subdivision (b) *who is*
40 *not exempted from fingerprinting* has been convicted of a crime,



1 other than a minor traffic violation, *or arrested for a crime*
2 *specified in subparagraph (B) of paragraph (1), subject to*
3 *subdivision (e)*, the application shall be denied, unless the director
4 grants an exemption pursuant to subdivision (f).

5 (B) If the ~~State Department of Social Services~~ *department* finds
6 that the applicant, or any other person specified in subdivision (b)
7 *who is not exempted from fingerprinting*, is awaiting trial for a
8 crime other than a minor traffic violation, the ~~State Department of~~
9 ~~Social Services~~ *department* may cease processing the application
10 until the conclusion of the trial *or other disposition of the case*.

11 (C) If no criminal ~~record~~ *history* information has been
12 recorded, the Department of Justice shall provide the applicant and
13 the State Department of Social Services with a statement of that
14 fact.

15 (D) If the ~~State Department of Social Services~~ *department*
16 finds after licensure *or the issuance of a special permit* that the
17 licensee, *special permit holder*, or any other person specified in
18 ~~paragraph (2) of~~ subdivision (b) *who is not exempted from*
19 *fingerprinting*, has been convicted of a crime other than a minor
20 traffic violation, *or arrested for a crime specified in subparagraph*
21 *(B) of paragraph (1), subject to subdivision (e)*, the license *or*
22 *special permit* may be revoked, unless the director grants an
23 exemption pursuant to subdivision (f).

24 (E) ~~An~~ *In addition to the criminal records search required by*
25 *this subdivision, an applicant and any other person specified in*
26 ~~subdivision (b) for licensure or for a special permit shall submit~~
27 a second set of fingerprints to the Department of Justice, for the
28 purpose of searching the records of the Federal Bureau of
29 Investigation, ~~in addition to the search required by subdivision (a).~~
30 If an applicant meets all other conditions for licensure *or for a*
31 *special permit*, except for the State Department of Social Services'
32 receipt of the Federal Bureau of Investigation's criminal history
33 information for the applicant ~~and persons listed in subdivision (b)~~,
34 the department may issue a license *or special permit* if the
35 applicant ~~and each person described by subdivision (b)~~ has signed
36 and submitted a ~~statement~~ *declaration, under penalty of perjury*,
37 that he or she has never been convicted of a crime in the United
38 States, other than a traffic infraction ~~as defined in punishable~~
39 *pursuant to paragraph (1) of subdivision (a) of Section 42001 of*
40 *the Vehicle Code, or arrested for a crime specified in*



1 subparagraph (B) of paragraph (1). If, after licensure or the
2 issuance of a special permit, the department determines, based on
3 the results from the Federal Bureau of Investigation's criminal
4 record search, that the licensee or special permit holder has a
5 conviction for any crime other than a minor traffic violation, or
6 has been arrested for a crime specified subparagraph (B) of
7 paragraph (1), subject to subdivision (e), the department may
8 revoke the license pursuant to Section 1596.885. The department
9 may also suspend the license pending an administrative hearing
10 pursuant to Section 1596.886.

11 (F) In addition to the criminal records search required by this
12 subdivision, each person specified in subdivision (b) who is not
13 exempted from fingerprinting shall submit a second set of
14 fingerprints to the Department of Justice for the purpose of
15 searching the criminal records of the Federal Bureau of
16 Investigation records for that person. If any person specified in
17 subdivision (b) who is not exempted from fingerprinting obtains
18 either a criminal record clearance from the Department of Justice
19 or an exemption from disqualification pursuant to subdivision (f)
20 from the State Department of Social Services pending the
21 department's receipt of the Federal Bureau of Investigation's
22 criminal history for the person, the department may allow that
23 person to be employed by, reside at, or be present in the child day
24 care facility or family day care home if the person has signed and
25 submitted a declaration, under penalty of perjury, that he or she
26 has never been convicted of a crime in the United States, other than
27 a minor traffic infraction punishable pursuant to paragraph (1) of
28 subdivision (a) of Section 42001 of the Vehicle Code or the crime
29 for which the exemption from disqualification was granted, or
30 arrested for a crime specified in subparagraph (B) of paragraph
31 (1). If after obtaining a criminal record clearance or exemption for
32 a person specified in subdivision (b) who is not exempted from
33 fingerprinting, the department determines, based on the results
34 from the Federal Bureau of Investigation's criminal record search,
35 that a person specified in subdivision (b) who is not exempted from
36 fingerprinting has a conviction for any crime other than a minor
37 traffic violation, or has been arrested for a crime specified in
38 subparagraph (B) of paragraph (1), subject to subdivision (e), the
39 department shall determine if the person should be removed or
40 excluded, or both, from the child day care facility or family day



1 *care home pursuant to paragraph (2) of subdivision (c) until a*
2 *decision on the exemption from disqualification is rendered.*

3 (G) If, after licensure or the issuance of a special permit, the
4 department determines that the licensee or special permit holder
5 or person specified in subdivision (b) who is not exempted from
6 fingerprinting has a ~~criminal record~~ conviction of an offense other
7 than a minor traffic violation or a record of arrest for any crime
8 specified in subparagraph (B) of paragraph (1), subject to
9 subdivision (e), the license may be revoked pursuant to Section
10 1596.885. The department may also suspend the license pending
11 an administrative hearing pursuant to Section 1596.886.

12 (b) (1) In addition to the applicant, this section shall be
13 applicable to criminal convictions and arrests of the following
14 persons:

15 (A) Adults responsible for administration or direct supervision
16 of staff.

17 (B) Any person, other than a child, residing in the facility.

18 (C) Any person who provides care and supervision to the
19 children.

20 (D) Any staff person, volunteer, or employee who has contact
21 with the children.

22 ~~(i) A volunteer providing time-limited specialized services~~
23 ~~shall be exempt from the requirements of this subdivision if this~~
24 ~~person is directly supervised by the licensee or a facility employee~~
25 ~~with a criminal record clearance or exemption, the volunteer~~
26 ~~spends no more than 16 hours per week at the facility, and the~~
27 ~~volunteer is not left alone with children in care.~~

28 ~~(ii) A student enrolled or participating at an accredited~~
29 ~~educational institution shall be exempt from the requirements of~~
30 ~~this subdivision if the student is directly supervised by the licensee~~
31 ~~or a facility employee with a criminal record clearance or~~
32 ~~exemption, the facility has an agreement with the educational~~
33 ~~institution concerning the placement of the student, the student~~
34 ~~spends no more than 16 hours per week at the facility, and the~~
35 ~~student is not left alone with children in care.~~

36 ~~(iii) A volunteer who is a relative, legal guardian, or foster~~
37 ~~parent of a client in the facility shall be exempt from the~~
38 ~~requirements of this subdivision.~~



1 ~~(iv) A contracted repair person retained by the facility, if not~~
 2 ~~left alone with children in care, shall be exempt from the~~
 3 ~~requirements of this subdivision.~~

4 ~~(v) Any person similar to those described in this subdivision,~~
 5 ~~as defined by the department in regulations.~~

6 (E) If the applicant is a firm, partnership, association, or
 7 corporation, the chief executive officer, other person serving in
 8 like capacity, or a person designated by the chief executive officer
 9 as responsible for the operation of the *child day care facility or*
 10 *family day care home*, as designated by the applicant agency.

11 (F) If the applicant is a local educational agency, the president
 12 of the governing board, the school district superintendent, or a
 13 person designated to administer the operation of the facility, as
 14 designated by the local educational agency.

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

21 ~~(H) This section does not apply to employees~~

22 (2) *The following persons are exempt from the requirements*
 23 *applicable under paragraph (1):*

24 (A) *A volunteer providing time-limited specialized services*
 25 *shall be exempt from the requirements of this subdivision if this*
 26 *person is directly supervised by the licensee, special permit holder,*
 27 *or a child day care facility or family day care home employee with*
 28 *a criminal record clearance or exemption, the volunteer spends no*
 29 *more than 16 hours per week at the child day care facility or family*
 30 *day care home, and the volunteer is not left alone with children in*
 31 *care.*

32 (B) *A student enrolled or participating at an accredited*
 33 *educational institution shall be exempt from the requirements of*
 34 *this subdivision if the student is directly supervised by the licensee,*
 35 *special permit holder, or a child day care facility or family day care*
 36 *home employee with a criminal record clearance or exemption, the*
 37 *child day care facility or family day care home has an agreement*
 38 *with the educational institution concerning the placement of the*
 39 *student, the student spends no more than 16 hours per week at the*



1 *child day care facility or family day care home, and the student is*
2 *not left alone with children in care.*

3 (C) *A volunteer who is a relative, legal guardian, or foster*
4 *parent of a client in the child day care facility or family day care*
5 *home shall be exempt from the requirements of this subdivision.*

6 (D) *A contracted repair person retained by the child day care*
7 *facility or family day care home, if not left alone with children in*
8 *care, shall be exempt from the requirements of this subdivision.*

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

11 (F) *Employees of child care and development programs under*
12 *contract with the State Department of Education who have*
13 *completed a criminal records clearance as part of an application to*
14 *the Commission on Teacher Credentialing, and who possess a*
15 *current credential or permit issued by the commission, including*
16 *employees of child care and development programs that serve both*
17 *children subsidized under, and children not subsidized under, a*
18 *State Department of Education contract. The Commission on*
19 *Teacher Credentialing shall notify the department upon revocation*
20 *of a current credential or permit issued to an employee of a child*
21 *care and development program under contract with the State*
22 *Department of Education.*

23 ~~(I) This section does not apply to employees~~

24 (G) *Employees of a child care and development program*
25 *operated by a school district, county office of education, or*
26 *community college district under contract with the State*
27 *Department of Education who have completed a criminal record*
28 *clearance as a condition of employment. The school district,*
29 *county office of education, or community college district upon*
30 *receiving information that the status of an employee's criminal*
31 *record clearance has changed shall submit that information to the*
32 *department.*

33 ~~(2)~~

34 (3) *Nothing in this subdivision shall prevent a licensee or*
35 *special permit holder from requiring a criminal record clearance*
36 *of any individuals exempt from the requirements under this*
37 *subdivision.*

38 (c) (1) (A) ~~Subsequent to initial licensure, any~~ *Any person*
39 *specified in subdivision (b) and who is not exempted from*
40 *fingerprinting shall, as a condition to employment, residence, or*



1 *obtain, prior to his or her initial presence in a child day care*
2 *facility or family day care home, either a criminal record*
3 *clearance from the Department of Justice or an exemption from*
4 *disqualification pursuant to subdivision (f) from the State*
5 *Department of Social Services. Any person specified in subdivision*
6 *(b) who is not exempted from fingerprinting shall be fingerprinted*
7 *and shall sign a declaration, under penalty of perjury, regarding*
8 *any prior criminal conviction or any arrest for any crime specified*
9 *in subparagraph (B) of paragraph (1) of subdivision (a). The*
10 *licensee shall submit these fingerprints to the Department of*
11 *Justice, along with a second set of fingerprints for the purpose of*
12 *searching the records of the Federal Bureau of Investigation, or to*
13 *shall comply with paragraph (1) of subdivision (h), prior to the*
14 *person's employment, residence, or initial presence in the child*
15 *day care facility.*

16 (B) ~~These fingerprints shall be on a card provided in a form~~
17 *required by the State Department of Social Services for the*
18 *purpose of obtaining a permanent set of fingerprints and submitted*
19 *to the Department of Justice by the licensee or sent by electronic*
20 *transmission in a manner approved by the State Department of*
21 *Social Services. A licensee's or special permit holder's failure to*
22 *prohibit the initial presence in a facility of any person specified in*
23 *subdivision (b) who is not exempted from fingerprinting and who*
24 *has not received either a criminal record clearance or an*
25 *exemption from disqualification pursuant to subdivision (f) shall*
26 *result in a citation of a deficiency and the immediate assessment*
27 *of civil penalties, by the department and against the licensee or*
28 *special permit holder, in the amount of one hundred dollars (\$100)*
29 *per violation per day, and shall be grounds for disciplining the*
30 *licensee pursuant to Section 1596.885 or 1596.886. A licensee's*
31 *or special permit holder's failure to submit fingerprints to the*
32 *Department of Justice, or to comply with paragraph (1) of*
33 *subdivision (h), as required in this section, shall result in the*
34 *citation of a deficiency, by the State Department of Social Services*
35 *and against the licensee or special permit holder; and an*
36 *immediate assessment of civil penalties in the amount of one*
37 *hundred dollars (\$100) per violation per day and shall be grounds*
38 *for disciplining the licensee pursuant to Section 1596.885 or*
39 *1596.886. The State Department of Social Services may assess*
40 *civil penalties for continued violations permitted by Sections*



1 1596.99 and 1597.62. The fingerprints shall then be submitted to
2 the State Department of ~~Social Services~~ *Justice* for processing.
3 Within 14 calendar days of the receipt of the fingerprints, the
4 Department of Justice shall notify the State Department of Social
5 Services of the criminal ~~record~~ *history* information, as provided in
6 this subdivision. If no criminal ~~record~~ *history* information has been
7 recorded, the Department of Justice shall provide the licensee *or*
8 *special permit holder* and the State Department of Social Services
9 with a statement of that fact within 14 calendar days of receipt of
10 the fingerprints. If new fingerprints are required for processing,
11 the Department of Justice shall, within 14 calendar days from the
12 date of receipt of the fingerprints, notify the licensee that the
13 fingerprints ~~were illegible~~ *are required*.

14 (C) Documentation of the individual's clearance or exemption
15 *from disqualification pursuant to subdivision (f)* shall be
16 maintained by the licensee *or special permit holder*, and shall be
17 available for inspection. ~~When live-scan technology is~~
18 ~~operational, as defined in Section 1522.04, the~~ *The* Department of
19 Justice shall notify the department, as required by ~~that section~~
20 *Section 1522.04*, and shall notify the licensee *or special permit*
21 *holder*; by mail within 14 days of electronic transmission of the
22 fingerprints to the Department of Justice, if the person has no
23 criminal ~~record~~ *history*. Any violation of the regulations adopted
24 pursuant to Section 1522.04 shall result in the citation of a
25 deficiency and an immediate assessment of civil penalties, *by the*
26 *State Department of Social Services and against the licensee or*
27 *special permit holder*, in the amount of one hundred dollars (\$100)
28 *per violation per day, and shall be grounds for disciplining the*
29 *licensee pursuant to Section 1596.885 or 1596.886*. The
30 department may assess civil penalties for continued violations, as
31 permitted by Sections 1596.99 and 1597.62.

32 (2) Except for persons specified in ~~paragraph (2) of~~ subdivision
33 (b) *who are not exempted from fingerprinting*, the licensee *or*
34 *special permit holder* shall endeavor to ascertain the previous
35 employment history of persons required to be fingerprinted under
36 ~~this~~ subdivision (b). If it is determined by the department, on the
37 basis of fingerprints submitted to the Department of Justice, that
38 *subsequent to obtaining either a criminal record clearance or*
39 *exemption from disqualification pursuant to subdivision (f)*, the
40 person has been convicted of a sex offense against a minor, an



1 offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the
2 Penal Code, or a felony, *or has been arrested for any crime*
3 *specified in subparagraph (B) of paragraph (1) of subdivision (a),*
4 *subject to subdivision (e),* the State Department of Social Services
5 shall notify the licensee *or special permit holder* to act
6 immediately to terminate the person's employment, remove the
7 person from the child day care facility *or family day care home,* or
8 bar the person from entering the child day care facility *or family*
9 *day care home, as appropriate.* The department may subsequently
10 grant an exemption *from disqualification* pursuant to subdivision
11 (f). If the conviction was for another crime except a minor traffic
12 violation, the licensee *or special permit holder* shall, upon
13 notification by the ~~State Department of Social Services~~
14 ~~department,~~ act immediately to either ~~(1)~~ (A) terminate the
15 person's employment, remove the person from the child day care
16 facility *or family day care home,* or bar the person from entering
17 the child day care facility *or family day care home, as appropriate;*
18 or ~~(2)~~ (B) seek an exemption pursuant to subdivision (f). The
19 department shall determine if the person shall be allowed to remain
20 in the *child day care facility or family day care home* until a
21 decision on the exemption *from disqualification pursuant to*
22 *subdivision (f)* is rendered. A licensee's *or special permit holder's*
23 failure to comply with the department's prohibition of
24 employment, contact with clients, or presence in the *child day care*
25 *facility or family day care home* as required by this paragraph shall
26 *result in a citation of a deficiency and an immediate assessment of*
27 *civil penalties, by the department and against the licensee or*
28 *special permit holder, in the amount of one hundred dollars (\$100)*
29 *per violation per day, and shall be grounds for disciplining the*
30 licensee pursuant to Section 1596.885 or 1596.886.

31 (3) The department may issue an exemption on its own motion
32 pursuant to subdivision (f) 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 ~~(4) 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 (f).~~



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). Only an applicant for licensure or a special permit~~
5 ~~or a licensee or special permit holder may request an exemption~~
6 ~~on behalf of an individual specified in subdivision (b) who is not~~
7 ~~exempted from fingerprinting.~~

8 (d) (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 *that* the department is permitted to take following the
12 establishment of a conviction may be taken when the time for
13 appeal has elapsed, ~~or~~ *when* 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
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, *or arrests from another state or by*
34 *any federal agency*, as if the criminal offense was committed in this
35 state.

36 (e) The State Department of Social Services shall not use a
37 record of arrest to deny, revoke, or terminate any application,
38 license, *special permit*, employment, or residence unless the
39 department investigates the incident and secures evidence,
40 whether or not related to the incident of arrest, that is admissible



1 in an administrative hearing to establish conduct by the person that
2 may pose a risk to the health and safety of any person who is or may
3 become a client. The ~~State Department of Social Services~~
4 *department* is authorized to obtain any arrest or conviction records
5 or reports from any law enforcement agency as necessary to the
6 performance of its duties to inspect, license, *issue a special permit*
7 *for*, and investigate ~~community~~ *child day care facilities or family*
8 *day care homes* and individuals associated with a ~~community~~ *child*
9 *day care facility or family day care home*.

10 (f) (1) After review of the record, the director may grant an
11 exemption from disqualification for a license or special permit as
12 specified in ~~paragraphs (1) and (4) of~~ subdivision (a), or for
13 employment, residence, or presence in a child day care facility or
14 *family day care home* as specified in ~~paragraphs (3), (4), and (5)~~
15 ~~of~~ subdivision (c), if the director has substantial and convincing
16 evidence to support a reasonable belief that the applicant ~~and the~~
17 *or other* person convicted *of, or arrested for*, the crime, ~~if other~~
18 ~~than the applicant, are~~ *is* of good character so as to justify issuance
19 of the license or special permit or granting an exemption ~~for~~
20 ~~purposes of subdivision (c) pursuant to this subdivision~~. However,
21 no exemption shall be granted pursuant to this subdivision if the
22 conviction was for any of the following offenses:

23 (A) An offense specified in Section 220, *subdivision (b) of*
24 *Section 237, Section 243.4, or Section 246, Section 264.1,*
25 ~~subdivision (a) of Section 273a or, prior to January 1, 1994,
26 ~~paragraph (1) of Section 266a, Section 266e, Section 273a,
27 *Section 273ab, Section 273d, subdivision (e) of Section 273.5,*
28 *Section 288, or Section 289, subdivision (a) of Section 290, or the*
29 *Penal Code, any conviction for which the person is required to*
30 *register as a sex offender pursuant to Section 290 of the Penal*
31 *Code, Section 368, or subdivision (b) of Section 417, of the Penal*
32 *Code, or was a conviction of another any crime against an*
33 *individual specified in subdivision (c) of Section 667.5 of the*
34 *Penal Code, or any crime of violence specified in any regulation.*~~~~

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

39 (C) *An offense specified in Section 11379.6.*



1 (D) *First degree burglary specified in Sections 459 and 460 of*
2 *the Penal Code.*

3 (2) The department shall not prohibit a person from being
4 employed or having contact with clients in a *child day care* facility
5 *or a family day care home* on the basis of a denied criminal record
6 exemption request or arrest information unless the department
7 complies with the requirements of Section 1596.8897.

8 (g) Upon request of the licensee *or special permit holder*, who
9 shall enclose a self-addressed stamped postcard for this purpose,
10 the Department of Justice shall verify receipt of the fingerprints.

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

28 (2) ~~The State Department of Social Services~~ *department* shall
29 hold criminal record clearances in its active files for a minimum
30 of two years after ~~an employee~~ *a person* is no longer employed ~~at~~
31 *by, residing at, or present in* a licensed *child day care* facility *or*
32 *family day care home* in order for the criminal record clearances
33 to be transferred.

34 ~~(i) Amendments to this section made in the 1998 calendar year~~
35 ~~shall be implemented commencing 60 days after the effective date~~
36 ~~of the act amending this section in the 1998 calendar year, except~~
37 ~~those provisions for the submission of fingerprints for searching~~
38 ~~the records of the Federal Bureau of Investigation, which shall be~~
39 ~~implemented commencing January 1, 1999.~~



1 SEC. 5. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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