

AMENDED IN ASSEMBLY JANUARY 22, 2004

AMENDED IN ASSEMBLY MAY 7, 2003

AMENDED IN ASSEMBLY APRIL 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

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 amended, 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.~~

Under existing law, an individual is required to obtain either a criminal record clearance from the Department of Justice or a criminal

record exemption from the State Department of Social Services before his or her initial presence in a community care facility. Under existing law, a violation of that requirement results in the citation of deficiency and the immediate assessment of civil penalties in the amount of \$100 per violation. The department is authorized to assess additional civil penalties for continued violations.

Existing law specifies that a licensee's failure to submit fingerprints to the Department of Justice or to transfer a current criminal record clearance, when required, results in the citation of deficiency and the immediate assessment of civil penalties in the amount of \$100 per violation. The State Department of Social Services is authorized to assess additional civil penalties for continued violations.

Existing law specifies that a licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility shall be grounds for denying an application for, or suspending or revoking, a license.

This bill would enhance the penalties for violating any of the above provisions by providing that a violation results in a citation of deficiency and the immediate assessment of civil penalties in the amount of \$100 per violation, per day, for a maximum of 30 days, and that a violation be grounds for denying an application for, or suspending or revoking, a license or administrator certificate.

~~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 permitholder, 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 person who is employed by, resides at, or is present in, a facility.~~

~~This bill would require the department to issue against the licensee, special permitholder, 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-no.~~

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

- 1 ~~SECTION 1. Section 1522 of the Health and Safety Code is~~
- 2 ~~SECTION 1. Section 1522 of the Health and Safety Code is~~
- 3 ~~amended to read:~~
- 4 1522. The Legislature recognizes the need to generate timely
- 5 and accurate positive fingerprint identification of applicants as a
- 6 condition of issuing licenses, permits, or certificates of approval



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

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

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

29 (3) Except during the 2003–04 fiscal year, ~~no fee shall be~~
30 ~~charged by~~ *neither* the Department of Justice ~~or~~ *nor* the State
31 Department of Social Services *may charge a fee* for the
32 fingerprinting of an applicant for a license or special permit to
33 operate a facility providing nonmedical board, room, and care for
34 six or less children or for obtaining a criminal record of the
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), has
40 been convicted of a crime other than a minor traffic violation, the



1 application shall be denied, unless the director grants an
2 exemption pursuant to subdivision (g).

3 (B) If the State Department of Social Services finds that the
4 applicant, or any other person specified in subdivision (b) is
5 awaiting trial for a crime other than a minor traffic violation, the
6 State Department of Social Services may cease processing the
7 application until the conclusion of the trial.

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

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

17 (E) An applicant and any other person specified in subdivision
18 (b) shall submit a second set of fingerprints to the Department of
19 Justice for the purpose of searching the criminal records of the
20 Federal Bureau of Investigation, in addition to the criminal records
21 search required by this subdivision. If an applicant and all other
22 persons described in subdivision (b) meet all of the conditions for
23 licensure, except receipt of the Federal Bureau of Investigation's
24 criminal history information for the applicant or any of the persons
25 described in subdivision (b), the department may issue a license if
26 the applicant and each person described in subdivision (b) has
27 signed and submitted a statement that he or she has never been
28 convicted of a crime in the United States, other than a traffic
29 infraction, as defined in paragraph (1) of subdivision (a) of Section
30 42001 of the Vehicle Code. If, after licensure, the department
31 determines that the licensee or any other person specified in
32 subdivision (b) has a criminal record, the license may be revoked
33 pursuant to Section 1550. The department may also suspend the
34 license pending an administrative hearing pursuant to Section
35 1550.5.

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

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

40 (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 if all
 34 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~~ *does* not apply to a person
17 who is a community care facility licensee or an employee of the
18 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~~ *does* not apply
25 to a person who is a community care licensee or employee of the
26 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 who come into the
39 home to visit for a length of time no longer than defined by the



1 department in regulations, provided that the adult friends and
2 family of the licensee 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. This exemption applies only if the person is visiting
15 the client or providing direct care and supervision to the client.

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

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

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

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

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

34 (B) Nothing in this subdivision shall prevent a licensee from
35 requiring a criminal record clearance of any individual exempt
36 from the requirements of this section, provided that the individual
37 has client contact.

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



1 (c) (1) Subsequent to initial licensure, any person specified in
2 subdivision (b) and not exempted from fingerprinting shall, as a
3 condition to employment, residence, or presence in a community
4 care facility, be fingerprinted and sign a declaration under penalty
5 of perjury regarding any prior criminal convictions. The licensee
6 shall submit these fingerprints to the Department of Justice, along
7 with a second set of fingerprints for the purpose of searching the
8 records of the Federal Bureau of Investigation, or to comply with
9 paragraph (1) of subdivision (h), prior to the person's
10 employment, residence, or initial presence in the community care
11 facility. These fingerprints shall be on a card provided by the State
12 Department of Social Services or sent by electronic transmission
13 in a manner approved by the State Department of Social Services
14 and the Department of Justice for the purpose of obtaining a
15 permanent set of fingerprints, and shall be submitted to the
16 Department of Justice by the licensee. A licensee's failure to
17 submit fingerprints to the Department of Justice or to comply with
18 paragraph (1) of subdivision (h), as required in this section, shall
19 result in the citation of a deficiency and the immediate assessment
20 of civil penalties in the amount of one hundred dollars (\$100) per
21 violation, *per day, for a maximum of 30 days, and shall be grounds*
22 *for disciplining the licensee pursuant to Section 1550.* The
23 department may assess civil penalties for continued violations as
24 permitted by Section 1548. The fingerprints shall then be
25 submitted to the State Department of Social Services for
26 processing. Upon request of the licensee, who shall enclose a
27 self-addressed stamped postcard for this purpose, the Department
28 of Justice shall verify receipt of the fingerprints.

29 (2) Within 14 calendar days of the receipt of the fingerprints,
30 the Department of Justice shall notify the State Department of
31 Social Services of the criminal record information, as provided for
32 in subdivision (a). If no criminal record information has been
33 recorded, the Department of Justice shall provide the licensee and
34 the State Department of Social Services with a statement of that
35 fact within 14 calendar days of receipt of the fingerprints.
36 Documentation of the individual's clearance or exemption shall be
37 maintained by the licensee and be available for inspection. If new
38 fingerprints are required for processing, the Department of Justice
39 shall, within 14 calendar days from the date of receipt of the
40 fingerprints, notify the licensee that the fingerprints were illegible.



1 When live-scan technology is operational, as defined in Section
2 1522.04, the Department of Justice shall notify the State
3 Department of Social Services, as required by that section, and
4 shall also notify the licensee by mail, within 14 days of electronic
5 transmission of the fingerprints to the Department of Justice, if the
6 person has no criminal history recorded. A violation of the
7 regulations adopted pursuant to Section 1522.04 shall result in the
8 citation of a deficiency and an immediate assessment of civil
9 penalties in the amount of one hundred dollars (\$100) per
10 violation, *per day, for a maximum of 30 days, and shall be grounds*
11 *for disciplining the licensee pursuant to Section 1550.* The
12 department may assess civil penalties for continued violations as
13 permitted by Section 1548.

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



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

8 (5) Concurrently with notifying the licensee pursuant to
9 paragraph (3), the department shall notify the affected individual
10 of his or her right to seek an exemption pursuant to subdivision (g).
11 The individual may seek an exemption only if the licensee
12 terminates the person's employment or removes the person from
13 the facility after receiving notice from the department pursuant to
14 paragraph (3).

15 (d) (1) Before issuing a license, special permit, or certificate
16 of approval to any person or persons to operate or manage a foster
17 family home or certified family home as described in Section
18 1506, the State Department of Social Services or other approving
19 authority shall secure from an appropriate law enforcement
20 agency a criminal record to determine whether the applicant or any
21 person specified in subdivision (b) has ever been convicted of a
22 crime other than a minor traffic violation or arrested for any crime
23 specified in Section 290 of the Penal Code, for violating Section
24 245 or 273.5, subdivision (b) of Section 273a or, prior to January
25 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for
26 any crime for which the department cannot grant an exemption if
27 the person was convicted and the person has not been exonerated.

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

30 (3) ~~No fee shall be charged by the~~ *Neither the* Department of
31 Justice ~~or~~ *nor* the State Department of Social Services *may charge*
32 *a fee* for the fingerprinting of an applicant for a license, special
33 permit, or certificate of approval described in this subdivision. The
34 record, if any, shall be taken into consideration when evaluating
35 a prospective applicant.

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

38 (A) If the applicant or other persons specified in subdivision (b)
39 have convictions that would make the applicant's home unfit as a



1 foster family home or a certified family home, the license, special
2 permit, or certificate of approval shall be denied.

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

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

11 (D) An applicant for a foster family home license or for
12 certification as a family home, and any other person specified in
13 subdivision (b), shall submit a set of fingerprints to the Department
14 of Justice for the purpose of searching the criminal records of the
15 Federal Bureau of Investigation, in addition to the criminal records
16 search required by subdivision (a). If an applicant meets all other
17 conditions for licensure, except receipt of the Federal Bureau of
18 Investigation's criminal history information for the applicant and
19 all persons described in subdivision (b), the department may issue
20 a license, or the foster family agency may issue a certificate of
21 approval, if the applicant, and each person described in
22 subdivision (b), has signed and submitted a statement that he or she
23 has never been convicted of a crime in the United States, other than
24 a traffic infraction, as defined in paragraph (1) of subdivision (a)
25 of Section 42001 of the Vehicle Code. If, after licensure or
26 certification, the department determines that the licensee, certified
27 foster parent, or any person specified in subdivision (b) has a
28 criminal record, the license may be revoked pursuant to Section
29 1550 and the certificate of approval revoked pursuant to
30 subdivision (b) of Section 1534. The department may also suspend
31 the license pending an administrative hearing pursuant to Section
32 1550.5.

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



1 (6) (A) The foster family agency shall obtain fingerprints from
2 certified home applicants and from persons specified in
3 subdivision (b) and shall submit them directly to the Department
4 of Justice or send them by electronic transmission in a manner
5 approved by the State Department of Social Services. A foster
6 family home licensee or foster family agency shall submit these
7 fingerprints to the Department of Justice, along with a second set
8 of fingerprints for the purpose of searching the records of the
9 Federal Bureau of Investigation or to comply with paragraph (1)
10 of subdivision (b) prior to the person's employment, residence, or
11 initial presence. A licensee's failure to submit fingerprints to the
12 Department of Justice, or comply with paragraph (1) of
13 subdivision (h), as required in this section, shall result in a citation
14 of a deficiency, and the immediate civil penalties of one hundred
15 dollars (\$100) per violation, *per day, for a maximum of 30 days,*
16 *and shall be grounds for disciplining the licensee pursuant to*
17 *Section 1550.* The State Department of Social Services may assess
18 penalties for continued violations, as permitted by Section 1548.
19 The fingerprints shall then be submitted to the State Department
20 of Social Services for processing.

21 (B) Upon request of the licensee, who shall enclose a
22 self-addressed envelope for this purpose, the Department of
23 Justice shall verify receipt of the fingerprints. Within five working
24 days of the receipt of the criminal record or information regarding
25 criminal convictions from the Department of Justice, the
26 department shall notify the applicant of any criminal arrests or
27 convictions. If no arrests or convictions are recorded, the
28 Department of Justice shall provide the foster family home
29 licensee or the foster family agency with a statement of that fact
30 concurrent with providing the information to the State Department
31 of Social Services.

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

37 (8) If the State Department of Social Services finds after
38 licensure or the granting of the certificate of approval that the
39 licensee, certified foster parent, or any other person specified in
40 paragraph (2) of subdivision (b), has been convicted of a crime



1 other than a minor traffic violation, the license or certificate of
2 approval may be revoked by the department or the foster family
3 agency, whichever is applicable, unless the director grants an
4 exemption pursuant to subdivision (g). A licensee's failure to
5 comply with the department's prohibition of employment, contact
6 with clients, or presence in the facility as required by paragraph (3)
7 of subdivision (c) shall be grounds for disciplining the licensee
8 pursuant to Section 1550.

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

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



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

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

9 (g) (1) After review of the record, the director may grant an
10 exemption from disqualification for a license or special permit as
11 specified in paragraphs (1) and (4) of subdivision (a), or for a
12 license, special permit, or certificate of approval as specified in
13 paragraphs (4) and (5) of subdivision (d), or for employment,
14 residence, or presence in a community care facility as specified in
15 paragraphs (3), (4), and (5) of subdivision (c), if the director has
16 substantial and convincing evidence to support a reasonable belief
17 that the applicant and the person convicted of the crime, if other
18 than the applicant, are of such good character as to justify issuance
19 of the license or special permit or granting an exemption for
20 purposes of subdivision (c). Except as otherwise provided in this
21 subdivision, ~~no~~ an exemption ~~shall~~ *may not* be granted pursuant to
22 this subdivision if the conviction was for any of the following
23 offenses:

24 (A) (i) An offense specified in Section 220, 243.4, or 264.1,
25 subdivision (a) of Section 273a or, prior to January 1, 1994,
26 paragraph (1) of Section 273a, Section 273d, 288, or 289,
27 subdivision (a) of Section 290, or Section 368 of the Penal Code,
28 or was a conviction of another crime against an individual
29 specified in subdivision (c) of Section 667.5 of the Penal Code.

30 (ii) Notwithstanding clause (i), the director may grant an
31 exemption regarding the conviction for an offense described in
32 paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5
33 of the Penal Code, if the employee or prospective employee has
34 been rehabilitated as provided in Section 4852.03 of the Penal
35 Code, has maintained the conduct required in Section 4852.05 of
36 the Penal Code for at least 10 years, and has the recommendation
37 of the district attorney representing the employee's county of
38 residence, or if the employee or prospective employee has
39 received a certificate of rehabilitation pursuant to Chapter 3.5



1 (commencing with Section 4852.01) of Title 6 of Part 3 of the
2 Penal Code.

3 (B) A felony offense specified in Section 729 of the Business
4 and Professions Code or Section 206 or 215, subdivision (a) of
5 Section 347, subdivision (b) of Section 417, or subdivision (a) of
6 Section 451 of the Penal Code.

7 (2) The department ~~shall~~ *may* not prohibit a person from being
8 employed or having contact with clients in a facility on the basis
9 of a denied criminal record exemption request or arrest
10 information unless the department complies with the requirements
11 of Section 1558.

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

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

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

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



1 (k) (1) The Department of Justice shall coordinate with the
2 State Department of Social Services to establish and implement an
3 automated live-scan processing system for fingerprints in the
4 district offices of the Community Care Licensing Division of the
5 State Department of Social Services by July 1, 1999. These
6 live-scan processing units shall be connected to the main system
7 at the Department of Justice by July 1, 1999, and shall become part
8 of that department's pilot project in accordance with its long-range
9 plan. The State Department of Social Services may charge a fee for
10 the costs of processing a set of live-scan fingerprints.

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

19 (l) Amendments to this section made in the 1999 portion of the
20 1999–2000 Regular Session shall be implemented commencing
21 60 days after the effective date of the act amending this section in
22 the 1999 portion of the 1999–2000 Regular Session, except that
23 those provisions for the submission of fingerprints for searching
24 the records of the Federal Bureau of Investigation shall be
25 implemented 90 days after the effective date of that act.

26 *SEC. 2. Section 1568.09 of the Health and Safety Code is*
27 *amended to read:*

28 1568.09. It is the intent of the Legislature in enacting this
29 section to require the fingerprints of those individuals whose
30 contact with residents of residential care facilities for persons with
31 a chronic, life-threatening illness may pose a risk to the residents'
32 health and safety.

33 Therefore, the Legislature supports the use of the fingerprint
34 live-scan technology, as identified in the long-range plan of the
35 Department of Justice for fully automating the processing of
36 fingerprints and other data by the year 1999, otherwise known as
37 the California Crime Information Intelligence System (CAL-CII),
38 to be used for applicant fingerprints. It is the intent of the
39 Legislature, in enacting this section, to require the fingerprints of



1 those individuals whose contact with community care clients may
2 pose a risk to the clients' health and safety.

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

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

17 (3) 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) has been
21 convicted of a crime, other than a minor traffic violation, the
22 application shall be denied, unless the director grants an
23 exemption pursuant to subdivision (f).

24 (B) If the State Department of Social Services finds that the
25 applicant, or any other person specified in subdivision (b) is
26 awaiting trial for a crime other than a minor traffic violation, the
27 State Department of Social Services may cease processing the
28 application until the conclusion of the trial.

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

32 (D) If the State Department of Social Services finds after
33 licensure that the licensee, or any other person specified in
34 paragraph (2) of subdivision (b), has been convicted of a crime
35 other than a minor traffic violation, the license may be revoked,
36 unless the director grants an exemption pursuant to subdivision (f).

37 (E) An applicant and any other person specified in subdivision
38 (b) shall submit to the Department of Justice a second set of
39 fingerprints for the purpose of searching the records of the Federal
40 Bureau of Investigation, in addition to the search required by this



1 subdivision. If an applicant meets all other conditions for
2 licensure, except receipt of the Federal Bureau of Investigation's
3 criminal history information for the applicant and persons listed in
4 subdivision (b), the department may issue a license if the applicant
5 and each person described by subdivision (b) has signed and
6 submitted a statement that he or she has never been convicted of
7 a crime in the United States, other than a traffic infraction as
8 defined in paragraph (1) of subdivision (a) of Section 42001 of the
9 Vehicle Code. If, after licensure, the department determines that
10 the licensee or person specified in subdivision (b) has a criminal
11 record, the license may be revoked pursuant to subdivision (a) of
12 Section 1568.82. The department may also suspend the license
13 pending an administrative hearing pursuant to subdivision (b) of
14 Section 1568.82.

15 (b) In addition to the applicant, the provisions of this section
16 shall be applicable to criminal convictions of the following
17 persons:

18 (1) Adults responsible for administration or direct supervision
19 of staff of the facility.

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

21 (3) Any person who provides resident 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 the
31 residential care facility for persons with chronic, life-threatening
32 illness. The facility shall maintain the copy of the certification on
33 file as long as care is being provided by the certified nurse assistant
34 or certified home health aide at the facility. Nothing in this
35 paragraph restricts the right of the department to exclude a
36 certified nurse assistant or certified home health aide from a
37 licensed residential care facility for persons with chronic,
38 life-threatening illness pursuant to Section 1568.092.

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



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

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

15 (6) 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 (c) (1) (A) Subsequent to initial licensure, any person
22 specified in subdivision (b) and not exempted from fingerprinting
23 shall, as a condition to employment, residence, or presence in a
24 residential care facility, be fingerprinted and sign a declaration
25 under penalty of perjury regarding any prior criminal convictions.
26 The licensee shall submit these fingerprints to the Department of
27 Justice, along with a second set of fingerprints, for the purpose of
28 searching the records of the Federal Bureau of Investigation, or to
29 comply with paragraph (1) of subdivision (g), prior to the person's
30 employment, residence, or initial presence in the residential care
31 facility.

32 (B) These fingerprints shall be on a card provided by the State
33 Department of Social Services for the purpose of obtaining a
34 permanent set of fingerprints and submitted to the Department of
35 Justice by the licensee or sent by electronic transmission in a
36 manner approved by the State Department of Social Services. A
37 licensee's failure to submit fingerprints to the Department of
38 Justice, or to comply with paragraph (1) of subdivision (g), as
39 required in this section, shall result in the citation of a deficiency
40 and an immediate assessment of civil penalties in the amount of



1 one hundred dollars (\$100) per violation, *per day, for a maximum*
2 *of 30 days, and shall be grounds for disciplining the licensee*
3 *pursuant to Section 1550.* The State Department of Social Services
4 may assess civil penalties for continued violations as allowed in
5 Section 1568.0822. The fingerprints shall then be submitted to the
6 State Department of Social Services for processing. The licensee
7 shall maintain and make available for inspection documentation of
8 the individual's clearance or exemption.

9 (2) (A) Paragraph (1) shall cease to be implemented when the
10 State Department of Social Services adopts emergency regulations
11 pursuant to Section 1522.04, and shall become inoperative when
12 those regulations become final.

13 (B) A violation of the regulations adopted pursuant to Section
14 1522.04 shall result in the citation of a deficiency and an
15 immediate assessment of civil penalties in the amount of one
16 hundred dollars (\$100) per violation. The department may assess
17 civil penalties for continued violations as permitted by Section
18 1568.0822.

19 (3) Within 14 calendar days of the receipt of the fingerprints,
20 the Department of Justice shall notify the State Department of
21 Social Services of the criminal record information, as provided for
22 in this subdivision. If no criminal record information has been
23 recorded, the Department of Justice shall provide the licensee and
24 the State Department of Social Services with a statement of that
25 fact within 14 calendar days of receipt of the fingerprints. If new
26 fingerprints are required for processing, the Department of Justice
27 shall, within 14 calendar days from the date of receipt of the
28 fingerprints, notify the licensee that the fingerprints were illegible.
29 When live-scan technology is operational, as defined in Section
30 1522.04, the Department of Justice shall notify the department, as
31 required by that section, and shall notify the licensee by mail
32 within 14 days of electronic transmission of the fingerprints to the
33 Department of Justice, if the person has no criminal history record.

34 (4) Except for persons specified in paragraph (2) of subdivision
35 (b), the licensee shall endeavor to ascertain the previous
36 employment history of persons required to be fingerprinted under
37 this subdivision. If it is determined by the State Department of
38 Social Services, on the basis of the fingerprints submitted to the
39 Department of Justice, that the person has been convicted of a sex
40 offense against a minor, an offense specified in Section 243.4,



1 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the
2 department shall notify the licensee to act immediately to
3 terminate the person's employment, remove the person from the
4 residential care facility, or bar the person from entering the
5 residential care facility. The department may subsequently grant
6 an exemption pursuant to subdivision (f). If the conviction was for
7 another crime, except a minor traffic violation, the licensee shall,
8 upon notification by the department, act immediately to either (1)
9 terminate the person's employment, remove the person from the
10 residential care facility, or bar the person from entering the
11 residential care facility; or (2) seek an exemption pursuant to
12 subdivision (f). The department shall determine if the person shall
13 be allowed to remain in the facility until a decision on the
14 exemption is rendered. A licensee's failure to comply with the
15 department's prohibition of employment, contact with clients, or
16 presence in the facility as required by this paragraph shall *result in*
17 *a citation of deficiency and an immediate assessment of civil*
18 *penalties by the department against the licensee, in the amount of*
19 *one hundred dollars (\$100) per violation, per day, for a maximum*
20 *of 30 days, and shall be grounds for disciplining the licensee*
21 *pursuant to Section 1568.082.*

22 (5) The department may issue an exemption on its own motion
23 pursuant to subdivision (f) if the person's criminal history
24 indicates that the person is of good character based on the age,
25 seriousness, and frequency of the conviction or convictions. The
26 department, in consultation with interested parties, shall develop
27 regulations to establish the criteria to grant an exemption pursuant
28 to this paragraph.

29 (6) Concurrently with notifying the licensee pursuant to
30 paragraph (4), the department shall notify the affected individual
31 of his or her right to seek an exemption pursuant to subdivision (f).
32 The individual may seek an exemption only if the licensee
33 terminates the person's employment or removes the person from
34 the facility after receiving notice from the department pursuant to
35 paragraph (4).

36 (d) (1) For purposes of this section or any other provision of
37 this chapter, a conviction means a plea or verdict of guilty or a
38 conviction following a plea of nolo contendere. Any action ~~which~~
39 *that* the department is permitted to take following the
40 establishment of a conviction may be taken when the time for



1 appeal has elapsed, ~~or~~ *when* the judgment of conviction has been
2 affirmed on appeal, or when an order granting probation is made
3 suspending the imposition of the sentence, notwithstanding a
4 subsequent order pursuant to Sections 1203.4 and 1203.4a of the
5 Penal Code permitting that person to withdraw his or her plea of
6 guilty and to enter a plea of not guilty, setting aside the verdict of
7 guilty, or dismissing the accusation, information, or indictment.
8 For purposes of this chapter, the record of a conviction, or a copy
9 thereof certified by the clerk of the court or by a judge of the court
10 in which the conviction occurred, shall be conclusive evidence of
11 the conviction. For purposes of this section or any other provision
12 of this chapter, the arrest disposition report certified by the
13 Department of Justice, or documents admissible in a criminal
14 action pursuant to Section 969b of the Penal Code, shall be prima
15 facie evidence of the conviction, notwithstanding any other
16 provision of law prohibiting the admission of these documents in
17 a civil or administrative action.

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

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

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



1 that the applicant and the person convicted of the crime, if other
2 than the applicant, are of such good character as to justify issuance
3 of the license or special permit or granting an exemption for
4 purposes of subdivision (c). However, ~~no~~ an exemption ~~shall~~ *may*
5 *not* be granted pursuant to this subdivision if the conviction was
6 for any of the following offenses:

7 (A) An offense specified in Section 220, 243.4, or 264.1,
8 subdivision (a) of Section 273a or, prior to January 1, 1994,
9 paragraph (1) of Section 273a, Section 273d, 288, or 289,
10 subdivision (a) of Section 290, or Section 368 of the Penal Code,
11 or was a conviction of another crime against an individual
12 specified in subdivision (c) of Section 667.5 of the Penal Code.

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

17 (2) The department ~~shall~~ *may* not prohibit a person from being
18 employed or having contact with clients in a facility on the basis
19 of a denied criminal record exemption request or arrest
20 information unless the department complies with the requirements
21 of Section 1568.092.

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

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



1 (h) If a licensee or facility is required by law to deny
2 employment or to terminate employment of any employee based
3 on written notification from the state department that the employee
4 has a prior criminal conviction or is determined unsuitable for
5 employment under Section 1568.092, the licensee or facility shall
6 not incur civil liability or unemployment insurance liability as a
7 result of that denial or termination.

8 (i) (1) The Department of Justice shall charge a fee sufficient
9 to cover its cost in providing services to comply with the 14-day
10 requirement contained in subdivision (c) for provision to the
11 department of criminal record information.

12 (2) Paragraph (1) shall cease to be implemented when the
13 department adopts emergency regulations pursuant to Section
14 1522.04, and shall become inoperative when permanent
15 regulations are adopted under that section.

16 (j) Amendments to the provisions of this section made in the
17 1998 calendar year shall be implemented commencing 60 days
18 after the effective date of the act amending this section in the 1998
19 calendar year, except those provisions for the submission of
20 fingerprints for searching the records of the Federal Bureau of
21 Investigation, which shall be implemented commencing January
22 1, 1999.

23 *SEC. 3. Section 1569.17 of the Health and Safety Code is*
24 *amended to read:*

25 1569.17. The Legislature recognizes the need to generate
26 timely and accurate positive fingerprint identification of
27 applicants as a condition of issuing licenses, permits, or
28 certificates of approval for persons to operate or provide direct
29 care services in a residential care facility for the elderly. The
30 Legislature supports the use of the fingerprint live-scan
31 technology, as identified in the long-range plan of the Department
32 of Justice for fully automating the processing of fingerprints and
33 other data by the year 1999. It is the intent of the Legislature in
34 enacting this section to require the fingerprints of those individuals
35 whose contact with clients of residential care facilities for the
36 elderly may pose a risk to the clients' health and safety.

37 (a) (1) Before issuing a license to any person or persons to
38 operate or manage a residential care facility for the elderly, the
39 department shall secure from an appropriate law enforcement
40 agency a criminal record to determine whether the applicant or any



1 other person specified in subdivision (b) has ever been convicted
2 of a crime other than a minor traffic violation or arrested for any
3 crime specified in Section 290 of the Penal Code, for violating
4 Section 245 or 273.5, subdivision (b) of Section 273a or, prior to
5 January 1, 1994, paragraph (2) of Section 273a of the Penal Code,
6 or for any crime for which the department cannot grant an
7 exemption if the person was convicted and the person has not been
8 exonerated.

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

12 (3) The following shall apply to the criminal record
13 information:

14 (A) If the State Department of Social Services finds that the
15 applicant or any other person specified in subdivision (b) has been
16 convicted of a crime, other than a minor traffic violation, the
17 application shall be denied, unless the director grants an
18 exemption pursuant to subdivision (f).

19 (B) If the State Department of Social Services finds that the
20 applicant, or any other person specified in subdivision (b) is
21 awaiting trial for a crime other than a minor traffic violation, the
22 State Department of Social Services may cease processing the
23 application until the conclusion of the trial.

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

27 (D) If the State Department of Social Services finds after
28 licensure that the licensee, or any other person specified in
29 paragraph (2) of subdivision (b), has been convicted of a crime
30 other than a minor traffic violation, the license may be revoked,
31 unless the director grants an exemption pursuant to subdivision (f).

32 (E) An applicant and any other person specified in subdivision
33 (b) shall submit a second set of fingerprints to the Department of
34 Justice, for the purpose of searching the records of the Federal
35 Bureau of Investigation, in addition to the search required by
36 subdivision (a). If an applicant meets all other conditions for
37 licensure, except receipt of the Federal Bureau of Investigation's
38 criminal history information for the applicant and persons listed in
39 subdivision (b), the department may issue a license if the applicant
40 and each person described by subdivision (b) has signed and



1 submitted a statement that he or she has never been convicted of
2 a crime in the United States, other than a traffic infraction as
3 defined in paragraph (1) of subdivision (a) of Section 42001 of the
4 Vehicle Code. If, after licensure, the department determines that
5 the licensee or person specified in subdivision (b) has a criminal
6 record, the license may be revoked pursuant to Section 1569.50.
7 The department may also suspend the license pending an
8 administrative hearing pursuant to Sections 1569.50 and 1569.51.

9 (b) In addition to the applicant, the provisions of this section
10 shall apply to criminal convictions of the following persons:

11 (1) (A) Adults responsible for administration or direct
12 supervision of staff.

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

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

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

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



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

7 (2) The following persons are exempt from requirements
8 applicable under paragraph (1):

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

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

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

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

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

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

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

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

23 (D) A third-party contractor or other business professional
24 retained by a client and at the facility at the request or by
25 permission of that client. These individuals ~~shall~~ *may* not be left
26 alone with other clients.

27 (E) Licensed or certified medical professionals are exempt
28 from fingerprint and criminal background check requirements
29 imposed by community care licensing. This exemption ~~shall~~ *does*
30 not apply to a person who is a community care facility licensee or
31 an employee of the facility.

32 (F) Employees of licensed home health agencies and members
33 of licensed hospice interdisciplinary teams who have contact with
34 a resident of a residential care facility at the request of the resident
35 or resident's legal decisionmaker are exempt from fingerprint and
36 criminal background check requirements imposed by community
37 care licensing. This exemption ~~shall~~ *does* not apply to a person
38 who is a community care facility licensee or an employee of the
39 facility.



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

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

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

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

26 (B) These fingerprints shall be on a fingerprint card provided
27 by the State Department of Social Services, or sent by electronic
28 transmission in a manner approved by the State Department of
29 Social Services and the Department of Justice and submitted to the
30 Department of Justice by the licensee. A licensee's failure to
31 submit fingerprints to the Department of Justice, or to comply with
32 paragraph (1) of subdivision (g), as required in this section, shall
33 result in the citation of a deficiency and an immediate assessment
34 of civil penalties in the amount of one hundred dollars (\$100) per
35 violation, *per day, for a maximum of 30 days, and shall be grounds*
36 *for disciplining the licensee pursuant to Section 1550.* The State
37 Department of Social Services may assess civil penalties for
38 continued violations as permitted by Section 1569.49. The
39 licensee shall then submit these fingerprints to the State
40 Department of Social Services for processing. Documentation of



1 the individual's clearance or exemption shall be maintained by the
2 licensee and be available for inspection. When live-scan
3 technology is operational, as defined in Section 1522.04, the
4 Department of Justice shall notify the department, as required by
5 that section, and notify the licensee by mail within 14 days of
6 electronic transmission of the fingerprints to the Department of
7 Justice, if the person has no criminal record. A violation of the
8 regulations adopted pursuant to Section 1522.04 shall result in the
9 citation of a deficiency and an immediate assessment of civil
10 penalties in the amount of one hundred dollars (\$100) per
11 violation, *per day, for a maximum of 30 days, and shall be grounds*
12 *for disciplining the licensee pursuant to Section 1550.* The
13 department may assess civil penalties for continued violations as
14 permitted by Section 1569.49.

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

25 (3) Except for persons specified in paragraph (2) of subdivision
26 (b), the licensee shall endeavor to ascertain the previous
27 employment history of persons required to be fingerprinted under
28 this subdivision. If the State Department of Social Services
29 determines, on the basis of the fingerprints submitted to the
30 Department of Justice, that the person has been convicted of a sex
31 offense against a minor, an offense specified in Section 243.4,
32 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State
33 Department of Social Services shall notify the licensee in writing
34 within 15 calendar days of the receipt of the notification from the
35 Department of Justice to act immediately to terminate the person's
36 employment, remove the person from the residential care facility
37 for the elderly, or bar the person from entering the residential care
38 facility for the elderly. The State Department of Social Services
39 may subsequently grant an exemption pursuant to subdivision (f).
40 If the conviction was for another crime, except a minor traffic



1 violation, the licensee shall, upon notification by the State
2 Department of Social Services, act immediately to either (1)
3 terminate the person's employment, remove the person from the
4 residential care facility for the elderly, or bar the person from
5 entering the residential care facility for the elderly or (2) seek an
6 exemption pursuant to subdivision (f). The department shall
7 determine if the person shall be allowed to remain in the facility
8 until a decision on the exemption is rendered by the department.
9 A licensee's failure to comply with the department's prohibition
10 of employment, contact with clients, or presence in the facility as
11 required by this paragraph shall *result in a citation of deficiency*
12 *and an immediate assessment of civil penalties by the department*
13 *against the licensee, in the amount of one hundred dollars (\$100)*
14 *per violation, per day, for a maximum of 30 days, and shall be*
15 grounds for disciplining the licensee pursuant to Section 1569.50.

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

23 (5) Concurrently with notifying the licensee pursuant to
24 paragraph (4), the department shall notify the affected individual
25 of his or her right to seek an exemption pursuant to subdivision (f).
26 The individual may seek an exemption only if the licensee
27 terminates the person's employment or removes the person from
28 the facility after receiving notice from the department pursuant to
29 paragraph (4).

30 (d) (1) For purposes of this section or any other provision of
31 this chapter, a conviction means a plea or verdict of guilty or a
32 conviction following a plea of nolo contendere. Any action that the
33 department is permitted to take following the establishment of a
34 conviction may be taken when the time for appeal has elapsed, ~~or~~
35 *when* the judgment of conviction has been affirmed on appeal or
36 when an order granting probation is made suspending the
37 imposition of the sentence, notwithstanding a subsequent order
38 pursuant to the provisions of Sections 1203.4 and 1203.4a of the
39 Penal Code permitting a person to withdraw his or her plea of
40 guilty and to enter a plea of not guilty, or setting aside the verdict



1 of guilty, or dismissing the accusation, information, or indictment.
2 For purposes of this section or any other provision of this chapter,
3 the record of a conviction, or a copy thereof certified by the clerk
4 of the court or by a judge of the court in which the conviction
5 occurred, shall be conclusive evidence of the conviction. For
6 purposes of this section or any other provision of this chapter, the
7 arrest disposition report certified by the Department of Justice or
8 documents admissible in a criminal action pursuant to Section
9 969b of the Penal Code shall be prima facie evidence of the
10 conviction, notwithstanding any other provision of law
11 prohibiting the admission of these documents in a civil or
12 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 as if the criminal offense was
16 committed in this state.

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

30 (f) (1) After review of the record, the director may grant an
31 exemption from disqualification for a license as specified in
32 paragraphs (1) and (4) of subdivision (a), or for employment,
33 residence, or presence in a residential care facility for the elderly
34 as specified in paragraphs (4), (5), and (6) of subdivision (c) if the
35 director has substantial and convincing evidence to support a
36 reasonable belief that the applicant and the person convicted of the
37 crime, if other than the applicant, are of such good character as to
38 justify issuance of the license or special permit or granting an
39 exemption for purposes of subdivision (c). However, ~~no~~ *an*



1 exemption ~~shall~~ *may not* be granted pursuant to this subdivision
2 if the conviction was for any of the following offenses:

3 (A) An offense specified in Section 220, 243.4, or 264.1,
4 subdivision (a) of Section 273a or, prior to January 1, 1994,
5 paragraph (1) of Section 273a, Section 273d, 288, or 289,
6 subdivision (a) of Section 290, or Section 368 of the Penal Code,
7 or was a conviction of another crime against an individual
8 specified in subdivision (c) of Section 667.5 of the Penal Code.

9 (B) A felony offense specified in Section 729 of the Business
10 and Professions Code or Section 206 or 215, subdivision (a) of
11 Section 347, subdivision (b) of Section 417, or subdivision (a) of
12 Section 451 of the Penal Code.

13 (2) The director shall notify in writing the licensee or the
14 applicant of his or her decision within 60 days of receipt of all
15 information from the applicant and other sources determined
16 necessary by the director for the rendering of a decision pursuant
17 to this subdivision.

18 (3) The department ~~shall~~ *may not* prohibit a person from being
19 employed or having contact with clients in a facility on the basis
20 of a denied criminal record exemption request or arrest
21 information unless the department complies with the requirements
22 of Section 1569.58.

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

37 (2) The State Department of Social Services shall hold criminal
38 record clearances in its active files for a minimum of two years
39 after an employee is no longer employed at a licensed facility in



1 order for the criminal record clearances to be transferred under this
2 section.

3 (h) If a licensee or facility is required by law to deny
4 employment or to terminate employment of any employee based
5 on written notification from the department that the employee has
6 a prior criminal conviction or is determined unsuitable for
7 employment under Section 1569.58, the licensee or facility shall
8 not incur civil liability or unemployment insurance liability as a
9 result of that denial or termination.

10 (i) Amendments to the provisions of this section made in the
11 1998 calendar year shall be implemented commencing 60 days
12 after the effective date of the act amending this section in the 1998
13 calendar year, except those provisions for the submission of
14 fingerprints for searching the records of the Federal Bureau of
15 Investigation, which shall be implemented commencing on
16 January 1, 1999.

17 *SEC. 4. Section 1596.871 of the Health and Safety Code is*
18 *amended to read:*

19 1596.871. The Legislature recognizes the need to generate
20 timely and accurate positive fingerprint identification of
21 applicants as a condition of issuing licenses, permits, or
22 certificates of approval for persons to operate or provide direct
23 care services in a child care center or family child care home.
24 Therefore, the Legislature supports the use of the fingerprint
25 live-scan technology, as defined in the long-range plan of the
26 Department of Justice for fully automating the processing of
27 fingerprints and other data by the year 1999, otherwise known as
28 the California Crime Information Intelligence System (CAL-CII),
29 to be used for applicant fingerprints. It is the intent of the
30 Legislature in enacting this section to require the fingerprints of
31 those individuals whose contact with child day care facility clients
32 may pose a risk to the children's health and safety.

33 (a) (1) Before issuing a license or special permit to any person
34 to operate or manage a day care facility, the department shall
35 secure from an appropriate law enforcement agency a criminal
36 record to determine whether the applicant or any other person
37 specified in subdivision (b) has ever been convicted of a crime
38 other than a minor traffic violation or arrested for any crime
39 specified in Section 290 of the Penal Code, for violating Section
40 245 or 273.5, subdivision (b) of Section 273a or, prior to January



1 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for
2 any crime for which the department cannot grant an exemption if
3 the person was convicted and the person has not been exonerated.

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

7 (3) Except during the 2003–04 fiscal year, ~~no fee shall be~~
8 ~~charged by~~ *neither* the Department of Justice ~~or~~ *nor* the
9 department *may charge a fee* for the fingerprinting of an applicant
10 who will serve six or fewer children or any family day care
11 applicant for a license, or for obtaining a criminal record of an
12 applicant pursuant to this section.

13 (4) The following shall apply to the criminal record
14 information:

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

20 (B) If the State Department of Social Services finds that the
21 applicant, or any other person specified in subdivision (b), is
22 awaiting trial for a crime other than a minor traffic violation, the
23 State Department of Social Services may cease processing the
24 application until the conclusion of the trial.

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

28 (D) If the State Department of Social Services finds after
29 licensure that the licensee, or any other person specified in
30 paragraph (2) of subdivision (b), has been convicted of a crime
31 other than a minor traffic violation, the license may be revoked,
32 unless the director grants an exemption pursuant to subdivision (f).

33 (E) An applicant and any other person specified in subdivision
34 (b) shall submit a second set of fingerprints to the Department of
35 Justice, for the purpose of searching the records of the Federal
36 Bureau of Investigation, in addition to the search required by
37 subdivision (a). If an applicant meets all other conditions for
38 licensure, except receipt of the Federal Bureau of Investigation's
39 criminal history information for the applicant and persons listed in
40 subdivision (b), the department may issue a license if the applicant



1 and each person described by subdivision (b) has signed and
2 submitted a statement that he or she has never been convicted of
3 a crime in the United States, other than a traffic infraction as
4 defined in paragraph (1) of subdivision (a) of Section 42001 of the
5 Vehicle Code. If, after licensure, the department determines that
6 the licensee or person specified in subdivision (b) has a criminal
7 record, the license may be revoked pursuant to Section 1596.885.
8 The department may also suspend the license pending an
9 administrative hearing pursuant to Section 1596.886.

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

12 (A) Adults responsible for administration or direct supervision
13 of staff.

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

15 (C) Any person who provides care and supervision to the
16 children.

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

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

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

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

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

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



1 (E) If the applicant is a firm, partnership, association, or
2 corporation, the chief executive officer, other person serving in
3 like capacity, or a person designated by the chief executive officer
4 as responsible for the operation of the facility, as designated by the
5 applicant agency.

6 (F) If the applicant is a local educational agency, the president
7 of the governing board, the school district superintendent, or a
8 person designated to administer the operation of the facility, as
9 designated by the local educational agency.

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

16 (H) This section does not apply to employees of child care and
17 development programs under contract with the State Department
18 of Education who have completed a criminal records clearance as
19 part of an application to the Commission on Teacher
20 Credentialing, and who possess a current credential or permit
21 issued by the commission, including employees of child care and
22 development programs that serve both children subsidized under,
23 and children not subsidized under, a State Department of
24 Education contract. The Commission on Teacher Credentialing
25 shall notify the department upon revocation of a current credential
26 or permit issued to an employee of a child care and development
27 program under contract with the State Department of Education.

28 (I) This section does not apply to employees of a child care and
29 development program operated by a school district, county office
30 of education, or community college district under contract with the
31 State Department of Education who have completed a criminal
32 record clearance as a condition of employment. The school
33 district, county office of education, or community college district
34 upon receiving information that the status of an employee's
35 criminal record clearance has changed shall submit that
36 information to the department.

37 (2) Nothing in this subdivision shall prevent a licensee from
38 requiring a criminal record clearance of any individuals exempt
39 from the requirements under this subdivision.



1 (c) (1) (A) Subsequent to initial licensure, any person
2 specified in subdivision (b) and not exempted from fingerprinting
3 shall, as a condition to employment, residence, or presence in a
4 child day care facility be fingerprinted and sign a declaration under
5 penalty of perjury regarding any prior criminal conviction. The
6 licensee shall submit these fingerprints to the Department of
7 Justice, along with a second set of fingerprints for the purpose of
8 searching the records of the Federal Bureau of Investigation, or to
9 comply with paragraph (1) of subdivision (h), prior to the person's
10 employment, residence, or initial presence in the child day care
11 facility.

12 (B) These fingerprints shall be on a card provided by the State
13 Department of Social Services for the purpose of obtaining a
14 permanent set of fingerprints and submitted to the Department of
15 Justice by the licensee or sent by electronic transmission in a
16 manner approved by the State Department of Social Services. A
17 licensee's failure to submit fingerprints to the Department of
18 Justice, or to comply with paragraph (1) of subdivision (h), as
19 required in this section, shall result in the citation of a deficiency,
20 and an immediate assessment of civil penalties in the amount of
21 one hundred dollars (\$100) per violation, *per day, for a maximum*
22 *of 30 days, and shall be grounds for disciplining the licensee*
23 *pursuant to Section 1596.885 or Section 1596.886.* The State
24 Department of Social Services may assess civil penalties for
25 continued violations permitted by Sections 1596.99 and 1597.62.
26 The fingerprints shall then be submitted to the State Department
27 of Social Services for processing. Within 14 calendar days of the
28 receipt of the fingerprints, the Department of Justice shall notify
29 the State Department of Social Services of the criminal record
30 information, as provided in this subdivision. If no criminal record
31 information has been recorded, the Department of Justice shall
32 provide the licensee and the State Department of Social Services
33 with a statement of that fact within 14 calendar days of receipt of
34 the fingerprints. If new fingerprints are required for processing,
35 the Department of Justice shall, within 14 calendar days from the
36 date of receipt of the fingerprints, notify the licensee that the
37 fingerprints were illegible.

38 (C) Documentation of the individual's clearance or exemption
39 shall be maintained by the licensee, and shall be available for
40 inspection. When live-scan technology is operational, as defined



1 in Section 1522.04, the Department of Justice shall notify the
2 department, as required by that section, and notify the licensee by
3 mail within 14 days of electronic transmission of the fingerprints
4 to the Department of Justice, if the person has no criminal record.
5 Any violation of the regulations adopted pursuant to Section
6 1522.04 shall result in the citation of a deficiency and an
7 immediate assessment of civil penalties in the amount of one
8 hundred dollars (\$100) per violation. The department may assess
9 civil penalties for continued violations, as permitted by Sections
10 1596.99 and 1597.62.

11 (2) Except for persons specified in paragraph (2) of subdivision
12 (b), the licensee shall endeavor to ascertain the previous
13 employment history of persons required to be fingerprinted under
14 this subdivision. If it is determined by the department, on the basis
15 of fingerprints submitted to the Department of Justice, that the
16 person has been convicted of a sex offense against a minor, an
17 offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the
18 Penal Code, or a felony, the State Department of Social Services
19 shall notify the licensee to act immediately to terminate the
20 person's employment, remove the person from the child day care
21 facility, or bar the person from entering the child day care facility.
22 The department may subsequently grant an exemption pursuant to
23 subdivision (f). If the conviction was for another crime except a
24 minor traffic violation, the licensee shall, upon notification by the
25 State Department of Social Services, act immediately to either (1)
26 terminate the person's employment, remove the person from the
27 child day care facility, or bar the person from entering the child day
28 care facility; or (2) seek an exemption pursuant to subdivision (f).
29 The department shall determine if the person shall be allowed to
30 remain in the facility until a decision on the exemption is rendered.
31 A licensee's failure to comply with the department's prohibition
32 of employment, contact with clients, or presence in the facility as
33 required by this paragraph shall *result in a citation of deficiency*
34 *and an immediate assessment of civil penalties by the department*
35 *against the licensee, in the amount of one hundred dollars (\$100)*
36 *per violation, per day, for a maximum of 30 days, and shall be*
37 *grounds for disciplining the licensee pursuant to Section 1596.885*
38 *or 1596.886.*

39 (3) The department may issue an exemption on its own motion
40 pursuant to subdivision (f) if the person's criminal history



1 indicates that the person is of good character based on the age,
2 seriousness, and frequency of the conviction or convictions. The
3 department, in consultation with interested parties, shall develop
4 regulations to establish the criteria to grant an exemption pursuant
5 to this paragraph.

6 (4) Concurrently with notifying the licensee pursuant to
7 paragraph (3), the department shall notify the affected individual
8 of his or her right to seek an exemption pursuant to subdivision (f).
9 The individual may seek an exemption only if the licensee
10 terminates the person's employment or removes the person from
11 the facility after receiving notice from the department pursuant to
12 paragraph (3).

13 (d) (1) For purposes of this section or any other provision of
14 this chapter, a conviction means a plea or verdict of guilty or a
15 conviction following a plea of nolo contendere. Any action ~~which~~
16 *that* the department is permitted to take following the
17 establishment of a conviction may be taken when the time for
18 appeal has elapsed, ~~or~~ *when* the judgment of conviction has been
19 affirmed on appeal, or when an order granting probation is made
20 suspending the imposition of sentence, notwithstanding a
21 subsequent order pursuant to Sections 1203.4 and 1203.4a of the
22 Penal Code permitting the person to withdraw his or her plea of
23 guilty and to enter a plea of not guilty, or setting aside the verdict
24 of guilty, or dismissing the accusation, information, or indictment.
25 For purposes of this section or any other provision of this chapter,
26 the record of a conviction, or a copy thereof certified by the clerk
27 of the court or by a judge of the court in which the conviction
28 occurred, shall be conclusive evidence of the conviction. For
29 purposes of this section or any other provision of this chapter, the
30 arrest disposition report certified by the Department of Justice, or
31 documents admissible in a criminal action pursuant to Section
32 969b of the Penal Code, shall be prima facie evidence of
33 conviction, notwithstanding any other provision of law
34 prohibiting the admission of these documents in a civil or
35 administrative action.

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



1 (e) The State Department of Social Services ~~shall~~ *may* not use
2 a record of arrest to deny, revoke, or terminate any application,
3 license, employment, or residence unless the department
4 investigates the incident and secures evidence, whether or not
5 related to the incident of arrest, that is admissible in an
6 administrative hearing to establish conduct by the person that may
7 pose a risk to the health and safety of any person who is or may
8 become a client. The State Department of Social Services is
9 authorized to obtain any arrest or conviction records or reports
10 from any law enforcement agency as necessary to the performance
11 of its duties to inspect, license, and investigate community care
12 facilities and individuals associated with a community care
13 facility.

14 (f) (1) After review of the record, the director may grant an
15 exemption from disqualification for a license or special permit as
16 specified in paragraphs (1) and (4) of subdivision (a), or for
17 employment, residence, or presence in a child day care facility as
18 specified in paragraphs (3), (4), and (5) of subdivision (c) if the
19 director has substantial and convincing evidence to support a
20 reasonable belief that the applicant and the person convicted of the
21 crime, if other than the applicant, are of good character so as to
22 justify issuance of the license or special permit or granting an
23 exemption for purposes of subdivision (c). However, ~~no~~ *an*
24 exemption ~~shall~~ *may not* be granted pursuant to this subdivision if
25 the conviction was for any of the following offenses:

26 (A) An offense specified in Section 220, 243.4, or 264.1,
27 subdivision (a) of Section 273a or, prior to January 1, 1994,
28 paragraph (1) of Section 273a, Section 273d, 288, or 289,
29 subdivision (a) of Section 290, or Section 368 of the Penal Code,
30 or was a conviction of another crime against an individual
31 specified in subdivision (c) of Section 667.5 of the Penal Code.

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

36 (2) The department ~~shall~~ *may* not prohibit a person from being
37 employed or having contact with clients in a facility on the basis
38 of a denied criminal record exemption request or arrest
39 information unless the department complies with the requirements
40 of Section 1596.8897.



1 (g) Upon request of the licensee, who shall enclose a
2 self-addressed stamped postcard for this purpose, the Department
3 of Justice shall verify receipt of the fingerprints.

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

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

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

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**All matter omitted in this version of the
bill appears in the bill as amended in the
Assembly, May 7, 2003 (JR 11)**

