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AMENDED IN ASSEMBLY JANUARY 22, 2004
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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 any of these facilities, except as specified.

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.

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

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

1 SECTION 1. Section 1522 of the Health and Safety Code is
2 amended to read:
3 1522. The Legislature recognizes the need to generate timely
4 and accurate positive fingerprint identification of applicants as a
5 condition of issuing licenses, permits, or certificates of approval
6 for persons to operate or provide direct care services in a
7 community care facility, foster family home, or a certified family
8 home of a licensed foster family agency. Therefore, the
9 Legislature supports the use of the fingerprint live-scan
10 technology, as identified in the long-range plan of the Department
11 of Justice for fully automating the processing of fingerprints and
12 other data by the year 1999, otherwise known as the California
13 Crime Information Intelligence System (CAL-CII), to be used for
14 applicant fingerprints. It is the intent of the Legislature in enacting



1 this section to require the fingerprints of those individuals whose
2 contact with community care clients may pose a risk to the clients’
3 health and safety.

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

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

20 (3) Except during the 2003–04 fiscal year, neither the
21 Department of Justice nor the State Department of Social Services
22 may charge a fee for the fingerprinting of an applicant for a license
23 or special permit to operate a facility providing nonmedical board,
24 room, and care for six or less children or for obtaining a criminal
25 record of the applicant pursuant to this section.

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

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

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

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



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

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

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

28 (A) Adults responsible for administration or direct supervision
29 of staff.

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

31 (C) Any person who provides client assistance in dressing,
32 grooming, bathing, or personal hygiene. Any nurse assistant or
33 home health aide meeting the requirements of Section 1338.5 or
34 1736.6, respectively, who is not employed, retained, or contracted
35 by the licensee, and who has been certified or recertified on or after
36 July 1, 1998, shall be deemed to meet the criminal record clearance
37 requirements of this section. A certified nurse assistant and
38 certified home health aide who will be providing client assistance
39 and who falls under this exemption shall provide one copy of his
40 or her current certification, prior to providing care, to the



1 community care facility. The facility shall maintain the copy of the
2 certification on file as long as care is being provided by the
3 certified nurse assistant or certified home health aide at the facility.
4 Nothing in this paragraph restricts the right of the department to
5 exclude a certified nurse assistant or certified home health aide
6 from a licensed community care facility pursuant to Section 1558.

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

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

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

18 (2) The following persons are exempt from the requirements
19 applicable under paragraph (1):

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

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

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

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

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

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

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

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

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



1 (C) Employees of a licensed home health agency and other
2 members of licensed hospice interdisciplinary teams who have a
3 contract with a client or resident of the facility and are in the
4 facility at the request of that client or resident's legal
5 decisionmaker. The exemption does not apply to a person who is
6 a community care facility licensee or an employee of the facility.

7 (D) Clergy and other spiritual caregivers who are performing
8 services in common areas of the community care facility or who
9 are advising an individual client at the request of, or with the
10 permission of, the client or legal decisionmaker, are exempt from
11 fingerprint and criminal background check requirements imposed
12 by community care licensing. This exemption does not apply to a
13 person who is a community care licensee or employee of the
14 facility.

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

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

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

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

22 (3) In addition to the exemptions in paragraph (2), the
23 following persons in foster family homes, certified family homes,
24 and small family homes are exempt from the requirements
25 applicable under paragraph (1):

26 (A) Adult friends and family of the licensee who come into the
27 home to visit for a length of time no longer than defined by the
28 department in regulations, provided that the adult friends and
29 family of the licensee are not left alone with the foster children.

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

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

36 (A) Unless contraindicated by the client's individualized
37 program plan (IPP) or needs and service plan, a spouse, significant
38 other, relative, or close friend of a client, or an attendant or a
39 facilitator for a client with a developmental disability if the
40 attendant or facilitator is not employed, retained, or contracted by



1 the licensee. This exemption applies only if the person is visiting
2 the client or providing direct care and supervision to the client.

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

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

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

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

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

21 (B) Nothing in this subdivision shall prevent a licensee from
22 requiring a criminal record clearance of any individual exempt
23 from the requirements of this section, provided that the individual
24 has client contact.

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

27 (c) (1) Subsequent to initial licensure, any person specified in
28 subdivision (b) and not exempted from fingerprinting shall, as a
29 condition to employment, residence, or presence in a community
30 care facility, be fingerprinted and sign a declaration under penalty
31 of perjury regarding any prior criminal convictions. The licensee
32 shall submit these fingerprints to the Department of Justice, along
33 with a second set of fingerprints for the purpose of searching the
34 records of the Federal Bureau of Investigation, or to comply with
35 paragraph (1) of subdivision (h), prior to the person's
36 employment, residence, or initial presence in the community care
37 facility. These fingerprints shall be on a card provided by the State
38 Department of Social Services or sent by electronic transmission
39 in a manner approved by the State Department of Social Services
40 and the Department of Justice for the purpose of obtaining a



1 permanent set of fingerprints, and shall be submitted to the
2 Department of Justice by the licensee. A licensee's failure to
3 submit fingerprints to the Department of Justice or to comply with
4 paragraph (1) of subdivision (h), as required in this section, shall
5 result in the citation of a deficiency and the immediate assessment
6 of civil penalties in the amount of one hundred dollars (\$100) per
7 violation, per day, for a maximum of 30 days, and shall be grounds
8 for disciplining the licensee pursuant to Section 1550. The
9 department may assess civil penalties for continued violations as
10 permitted by Section 1548. The fingerprints shall then be
11 submitted to the State Department of Social Services for
12 processing. Upon request of the licensee, who shall enclose a
13 self-addressed stamped postcard for this purpose, the Department
14 of Justice shall verify receipt of the fingerprints.

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 subdivision (a). 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.
22 Documentation of the individual's clearance or exemption shall be
23 maintained by the licensee and be available for inspection. If new
24 fingerprints are required for processing, the Department of Justice
25 shall, within 14 calendar days from the date of receipt of the
26 fingerprints, notify the licensee that the fingerprints were illegible.
27 When live-scan technology is operational, as defined in Section
28 1522.04, the Department of Justice shall notify the State
29 Department of Social Services, as required by that section, and
30 shall also notify the licensee by mail, within 14 days of electronic
31 transmission of the fingerprints to the Department of Justice, if the
32 person has no criminal history recorded. A violation of the
33 regulations adopted pursuant to Section 1522.04 shall result in the
34 citation of a deficiency and an immediate assessment of civil
35 penalties in the amount of one hundred dollars (\$100) per
36 violation, per day, for a maximum of 30 days, and shall be grounds
37 for disciplining the licensee pursuant to Section 1550. The
38 department may assess civil penalties for continued violations as
39 permitted by Section 1548.



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

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

35 (5) Concurrently with notifying the licensee pursuant to
36 paragraph (3), the department shall notify the affected individual
37 of his or her right to seek an exemption pursuant to subdivision (g).
38 The individual may seek an exemption only if the licensee
39 terminates the person's employment or removes the person from



1 the facility after receiving notice from the department pursuant to
2 paragraph (3).

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

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

18 (3) Neither the Department of Justice nor the State Department
19 of Social Services may charge a fee for the fingerprinting of an
20 applicant for a license, special permit, or certificate of approval
21 described in this subdivision. The record, if any, shall be taken into
22 consideration when evaluating a prospective applicant.

23 (4) The following shall apply to the criminal record
24 information:

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

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

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

37 (D) An applicant for a foster family home license or for
38 certification as a family home, and any other person specified in
39 subdivision (b), shall submit a set of fingerprints to the Department
40 of Justice for the purpose of searching the criminal records of the



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

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

26 (6) (A) The foster family agency shall obtain fingerprints from
27 certified home applicants and from persons specified in
28 subdivision (b) and shall submit them directly to the Department
29 of Justice or send them by electronic transmission in a manner
30 approved by the State Department of Social Services. A foster
31 family home licensee or foster family agency shall submit these
32 fingerprints to the Department of Justice, along with a second set
33 of fingerprints for the purpose of searching the records of the
34 Federal Bureau of Investigation or to comply with paragraph (1)
35 of subdivision (b) prior to the person's employment, residence, or
36 initial presence. A ~~licensee's~~ *foster family agency's* failure to
37 submit fingerprints to the Department of Justice, or comply with
38 paragraph (1) of subdivision (h), as required in this section, shall
39 result in a citation of a deficiency, and the immediate civil penalties
40 of one hundred dollars (\$100) per violation, per day, for a



1 maximum of 30 days, and shall be grounds for disciplining the
2 licensee pursuant to Section 1550. *A violation of the regulation*
3 *adopted pursuant to Section 1522.04 shall result in the citation of*
4 *a deficiency and an immediate assessment of civil penalties in the*
5 *amount of one hundred dollars (\$100) per violation, per day, for*
6 *a maximum of 30 days, and shall be grounds for disciplining the*
7 *foster family agency pursuant to Section 1550. A licensee's failure*
8 *to submit fingerprints to the Department of Justice, or comply with*
9 *paragraph (1) of subdivision (h), as required in this section, may*
10 *result in the citation of a deficiency and immediate civil penalties*
11 *of one hundred dollars (\$100) per violation. A licensee's violation*
12 *of regulations adopted pursuant to Section 1522.04 may result in*
13 *the citation of a deficiency and an immediate assessment of civil*
14 *penalties in the amount of one hundred dollars (\$100) per*
15 *violation. The State Department of Social Services may assess*
16 *penalties for continued violations, as permitted by Section 1548.*
17 *The fingerprints shall then be submitted to the State Department*
18 *of Social Services for processing.*

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

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

35 (8) If the State Department of Social Services finds after
36 licensure or the granting of the certificate of approval that the
37 licensee, certified foster parent, or any other person specified in
38 paragraph (2) of subdivision (b), has been convicted of a crime
39 other than a minor traffic violation, the license or certificate of
40 approval may be revoked by the department or the foster family



1 agency, whichever is applicable, unless the director grants an
2 exemption pursuant to subdivision (g). A licensee's failure to
3 comply with the department's prohibition of employment, contact
4 with clients, or presence in the facility as required by paragraph (3)
5 of subdivision (c) shall be grounds for disciplining the licensee
6 pursuant to Section 1550.

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

20 (f) (1) For purposes of this section or any other provision of
21 this chapter, a conviction means a plea or verdict of guilty or a
22 conviction following a plea of nolo contendere. Any action that the
23 State Department of Social Services is permitted to take following
24 the establishment of a conviction may be taken when the time for
25 appeal has elapsed, when the judgment of conviction has been
26 affirmed on appeal, or when an order granting probation is made
27 suspending the imposition of sentence, notwithstanding a
28 subsequent order pursuant to Sections 1203.4 and 1203.4a of the
29 Penal Code permitting the person to withdraw his or her plea of
30 guilty and to enter a plea of not guilty, or setting aside the verdict
31 of guilty, or dismissing the accusation, information, or indictment.
32 For purposes of this section or any other provision of this chapter,
33 the record of a conviction, or a copy thereof certified by the clerk
34 of the court or by a judge of the court in which the conviction
35 occurred, shall be conclusive evidence of the conviction. For
36 purposes of this section or any other provision of this chapter, the
37 arrest disposition report certified by the Department of Justice, or
38 documents admissible in a criminal action pursuant to Section
39 969b of the Penal Code, shall be prima facie evidence of the
40 conviction, notwithstanding any other provision of law



1 prohibiting the admission of these documents in a civil or
2 administrative action.

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

7 (g) (1) After review of the record, the director may grant an
8 exemption from disqualification for a license or special permit as
9 specified in paragraphs (1) and (4) of subdivision (a), or for a
10 license, special permit, or certificate of approval as specified in
11 paragraphs (4) and (5) of subdivision (d), or for employment,
12 residence, or presence in a community care facility as specified in
13 paragraphs (3), (4), and (5) of subdivision (c), if the director has
14 substantial and convincing evidence to support a reasonable belief
15 that the applicant and the person convicted of the crime, if other
16 than the applicant, are of such good character as to justify issuance
17 of the license or special permit or granting an exemption for
18 purposes of subdivision (c). Except as otherwise provided in this
19 subdivision, an exemption may not be granted pursuant to this
20 subdivision if the conviction was for any of the following offenses:

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

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

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



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

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

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

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

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

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

37 (k) (1) The Department of Justice shall coordinate with the
38 State Department of Social Services to establish and implement an
39 automated live-scan processing system for fingerprints in the
40 district offices of the Community Care Licensing Division of the



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

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

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

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

24 1568.09. It is the intent of the Legislature in enacting this
25 section to require the fingerprints of those individuals whose
26 contact with residents of residential care facilities for persons with
27 a chronic, life-threatening illness may pose a risk to the residents'
28 health and safety.

29 Therefore, the Legislature supports the use of the fingerprint
30 live-scan technology, as identified in the long-range plan of the
31 Department of Justice for fully automating the processing of
32 fingerprints and other data by the year 1999, otherwise known as
33 the California Crime Information Intelligence System (CAL-CII),
34 to be used for applicant fingerprints. It is the intent of the
35 Legislature, in enacting this section, to require the fingerprints of
36 those individuals whose contact with community care clients may
37 pose a risk to the clients' health and safety.

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



1 record to determine whether the applicant or any other person
2 specified in subdivision (b) has ever been convicted of a crime
3 other than a minor traffic violation or arrested for any crime
4 specified in Section 290 of the Penal Code, for violating Section
5 245 or 273.5, subdivision (b) of Section 273a or, prior to January
6 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for
7 any crime for which the department cannot grant an exemption if
8 the person was convicted and the person has not been 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 to the Department of Justice a second set of
34 fingerprints for the purpose of searching the records of the Federal
35 Bureau of Investigation, in addition to the search required by this
36 subdivision. 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 subdivision (a) of
7 Section ~~1568.82~~ 1568.082. The department may also suspend the
8 license pending an administrative hearing pursuant to subdivision
9 (b) of Section ~~1568.82~~ 1568.082.

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

13 (1) Adults responsible for administration or direct supervision
14 of staff of the facility.

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

16 (3) Any person who provides resident assistance in dressing,
17 grooming, bathing, or personal hygiene. Any nurse assistant or
18 home health aide meeting the requirements of Section 1338.5 or
19 1736.6, respectively, who is not employed, retained, or contracted
20 by the licensee, and who has been certified or recertified on or after
21 July 1, 1998, shall be deemed to meet the criminal record clearance
22 requirements of this section. A certified nurse assistant and
23 certified home health aide who will be providing client assistance
24 and who falls under this exemption shall provide one copy of his
25 or her current certification, prior to providing care, to the
26 residential care facility for persons with chronic, life-threatening
27 illness. The facility shall maintain the copy of the certification on
28 file as long as care is being provided by the certified nurse assistant
29 or certified home health aide at the facility. Nothing in this
30 paragraph restricts the right of the department to exclude a
31 certified nurse assistant or certified home health aide from a
32 licensed residential care facility for persons with chronic,
33 life-threatening illness pursuant to Section 1568.092.

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

36 (B) A volunteer shall be exempt from the requirements of this
37 subdivision if he or she is a relative, significant other, or close
38 friend of a client receiving care in the facility and the volunteer
39 does not provide direct care and supervision of residents. A
40 volunteer who provides direct care and supervision shall be



1 exempt if the volunteer is a resident's spouse, significant other,
2 close friend, or family member and provides direct care and
3 supervision to that resident only at the request of the resident. The
4 department may define in regulations persons similar to those
5 described in this subparagraph who may be exempt from the
6 requirements of this subdivision.

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

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

27 (B) These fingerprints shall be on a card provided by the State
28 Department of Social Services for the purpose of obtaining a
29 permanent set of fingerprints and submitted to the Department of
30 Justice by the licensee or sent by electronic transmission in a
31 manner approved by the State Department of Social Services. A
32 licensee's failure to submit fingerprints to the Department of
33 Justice, or to comply with paragraph (1) of subdivision (g), as
34 required in this section, shall result in the citation of a deficiency
35 and an immediate assessment of civil penalties in the amount of
36 one hundred dollars (\$100) per violation, per day, for a maximum
37 of 30 days, and shall be grounds for disciplining the licensee
38 pursuant to Section 1550. The State Department of Social Services
39 may assess civil penalties for continued violations as allowed in
40 Section 1568.0822. The fingerprints shall then be submitted to the



1 State Department of Social Services for processing. The licensee
2 shall maintain and make available for inspection documentation of
3 the individual's clearance or exemption.

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

8 ~~(B)~~

9 (2) A violation of the regulations adopted pursuant to Section
10 1522.04 shall result in the citation of a deficiency and an
11 immediate assessment of civil penalties in the amount of one
12 hundred dollars (\$100) per violation *per day, for a maximum of 30*
13 *days, and shall be grounds for disciplining the licensee pursuant*
14 *to Section 1550.* The department may assess civil penalties for
15 continued violations as permitted by Section 1568.0822.

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

31 (4) Except for persons specified in paragraph (2) of subdivision
32 (b), the licensee shall endeavor to ascertain the previous
33 employment history of persons required to be fingerprinted under
34 this subdivision. If it is determined by the State Department of
35 Social Services, on the basis of the fingerprints submitted to the
36 Department of Justice, that the person has been convicted of a sex
37 offense against a minor, an offense specified in Section 243.4,
38 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the
39 department shall notify the licensee to act immediately to
40 terminate the person's employment, remove the person from the



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

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

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

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



1 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
2 permitting that person to withdraw his or her plea of guilty and to
3 enter a plea of not guilty, setting aside the verdict of guilty, or
4 dismissing the accusation, information, or indictment. For
5 purposes of this chapter, the record of a conviction, or a copy
6 thereof certified by the clerk of the court or by a judge of the court
7 in which the conviction occurred, shall be conclusive evidence of
8 the conviction. For purposes of this section or any other provision
9 of this chapter, the arrest disposition report certified by the
10 Department of Justice, or documents admissible in a criminal
11 action pursuant to Section 969b of the Penal Code, shall be prima
12 facie evidence of the conviction, notwithstanding any other
13 provision of law prohibiting the admission of these documents in
14 a civil or administrative action.

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

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

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



1 purposes of subdivision (c). However, an exemption may not be
2 granted pursuant to this subdivision if the conviction was for any
3 of the following offenses:

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

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

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

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

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

37 (h) If a licensee or facility is required by law to deny
38 employment or to terminate employment of any employee based
39 on written notification from the state department that the employee
40 has a prior criminal conviction or is determined unsuitable for



1 employment under Section 1568.092, the licensee or facility shall
2 not incur civil liability or unemployment insurance liability as a
3 result of that denial or termination.

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

8 (2) Paragraph (1) shall cease to be implemented when the
9 department adopts emergency regulations pursuant to Section
10 1522.04, and shall become inoperative when permanent
11 regulations are adopted under that section.

12 (j) Amendments to the provisions of this section made in the
13 1998 calendar year shall be implemented commencing 60 days
14 after the effective date of the act amending this section in the 1998
15 calendar year, except those provisions for the submission of
16 fingerprints for searching the records of the Federal Bureau of
17 Investigation, which shall be implemented commencing January
18 1, 1999.

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

21 1569.17. The Legislature recognizes the need to generate
22 timely and accurate positive fingerprint identification of
23 applicants as a condition of issuing licenses, permits, or
24 certificates of approval for persons to operate or provide direct
25 care services in a residential care facility for the elderly. The
26 Legislature supports the use of the fingerprint live-scan
27 technology, as identified in the long-range plan of the Department
28 of Justice for fully automating the processing of fingerprints and
29 other data by the year 1999. It is the intent of the Legislature in
30 enacting this section to require the fingerprints of those individuals
31 whose contact with clients of residential care facilities for the
32 elderly may pose a risk to the clients' health and safety.

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



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

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

8 (3) The following shall apply to the criminal record
9 information:

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

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

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

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

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



1 the licensee or person specified in subdivision (b) has a criminal
2 record, the license may be revoked pursuant to Section 1569.50.
3 The department may also suspend the license pending an
4 administrative hearing pursuant to Sections 1569.50 and 1569.51.

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

7 (1) (A) Adults responsible for administration or direct
8 supervision of staff.

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

14 (C) Any person who provides client assistance in dressing,
15 grooming, bathing, or personal hygiene. Any nurse assistant or
16 home health aide meeting the requirements of Section 1338.5 or
17 1736.6, respectively, who is not employed, retained, or contracted
18 by the licensee, and who has been certified or recertified on or after
19 July 1, 1998, shall be deemed to meet the criminal record clearance
20 requirements of this section. A certified nurse assistant and
21 certified home health aide who will be providing client assistance
22 and who falls under this exemption shall provide one copy of his
23 or her current certification, prior to providing care, to the
24 residential care facility for the elderly. The facility shall maintain
25 the copy of the certification on file as long as the care is being
26 provided by the certified nurse assistant or certified home health
27 aide at the facility. Nothing in this paragraph restricts the right of
28 the department to exclude a certified nurse assistant or certified
29 home health aide from a licensed residential care facility for the
30 elderly pursuant to Section 1569.58.

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

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

36 (F) Additional officers of the governing body of the applicant
37 or other persons with a financial interest in the applicant, as
38 determined necessary by the department by regulation. The
39 criteria used in the development of these regulations shall be based



1 on the person’s capability to exercise substantial influence over the
2 operation of the facility.

3 (2) The following persons are exempt from requirements
4 applicable under paragraph (1):

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

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

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

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

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

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

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

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

19 (D) A third-party contractor or other business professional
20 retained by a client and at the facility at the request or by
21 permission of that client. These individuals may not be left alone
22 with other clients.

23 (E) Licensed or certified medical professionals are exempt
24 from fingerprint and criminal background check requirements
25 imposed by community care licensing. This exemption does not
26 apply to a person who is a community care facility licensee or an
27 employee of the facility.

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

35 (G) Clergy and other spiritual caregivers who are performing
36 services in common areas of the residential care facility, or who are
37 advising an individual resident at the request of, or with
38 permission of, the resident, are exempt from fingerprint and
39 criminal background check requirements imposed by community



1 care licensing. This exemption does not apply to a person who is
2 a community care facility licensee or an employee of the facility.

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

5 (I) Nothing in this paragraph shall prevent a licensee from
6 requiring a criminal record clearance of any individual exempt
7 from the requirements of this section, provided that the individual
8 has client contact.

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

20 (B) These fingerprints shall be on a fingerprint card provided
21 by the State Department of Social Services, or sent by electronic
22 transmission in a manner approved by the State Department of
23 Social Services and the Department of Justice and submitted to the
24 Department of Justice by the licensee. A licensee's failure to
25 submit fingerprints to the Department of Justice, or to comply with
26 paragraph (1) of subdivision (g), as required in this section, shall
27 result in the citation of a deficiency and an immediate assessment
28 of civil penalties in the amount of one hundred dollars (\$100) per
29 violation, per day, for a maximum of 30 days, and shall be grounds
30 for disciplining the licensee pursuant to Section 1550. The State
31 Department of Social Services may assess civil penalties for
32 continued violations as permitted by Section 1569.49. The
33 licensee shall then submit these fingerprints to the State
34 Department of Social Services for processing. Documentation of
35 the individual's clearance or exemption shall be maintained by the
36 licensee and be available for inspection. When live-scan
37 technology is operational, as defined in Section 1522.04, the
38 Department of Justice shall notify the department, as required by
39 that section, and notify the licensee by mail within 14 days of
40 electronic transmission of the fingerprints to the Department of



1 Justice, if the person has no criminal record. A violation of the
2 regulations adopted pursuant to Section 1522.04 shall result in the
3 citation of a deficiency and an immediate assessment of civil
4 penalties in the amount of one hundred dollars (\$100) per
5 violation, per day, for a maximum of 30 days, and shall be grounds
6 for disciplining the licensee pursuant to Section 1550. The
7 department may assess civil penalties for continued violations as
8 permitted by Section 1569.49.

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

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



1 determine if the person shall be allowed to remain in the facility
2 until a decision on the exemption is rendered by the department.
3 A licensee's failure to comply with the department's prohibition
4 of employment, contact with clients, or presence in the facility as
5 required by this paragraph shall result in a citation of deficiency
6 and an immediate assessment of civil penalties by the department
7 against the licensee, in the amount of one hundred dollars (\$100)
8 per violation, per day, for a maximum of 30 days, and shall be
9 grounds for disciplining the licensee pursuant to Section 1569.50.

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

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

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



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

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

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

24 (f) (1) After review of the record, the director may grant an
25 exemption from disqualification for a license as specified in
26 paragraphs (1) and (4) of subdivision (a), or for employment,
27 residence, or presence in a residential care facility for the elderly
28 as specified in paragraphs (4), (5), and (6) of subdivision (c) if the
29 director has substantial and convincing evidence to support a
30 reasonable belief that the applicant and the person convicted of the
31 crime, if other than the applicant, are of such good character as to
32 justify issuance of the license or special permit or granting an
33 exemption for purposes of subdivision (c). However, an
34 exemption may not be granted pursuant to this subdivision if the
35 conviction was for any of the following offenses:

36 (A) An offense specified in Section 220, 243.4, or 264.1,
37 subdivision (a) of Section 273a or, prior to January 1, 1994,
38 paragraph (1) of Section 273a, Section 273d, 288, or 289,
39 subdivision (a) of Section 290, or Section 368 of the Penal Code,



1 or was a conviction of another crime against an individual
2 specified in subdivision (c) of Section 667.5 of the 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 director shall notify in writing the licensee or the
8 applicant of his or her decision within 60 days of receipt of all
9 information from the applicant and other sources determined
10 necessary by the director for the rendering of a decision pursuant
11 to this subdivision.

12 (3) The department may not prohibit a person from being
13 employed or having contact with clients in a facility on the basis
14 of a denied criminal record exemption request or arrest
15 information unless the department complies with the requirements
16 of Section 1569.58.

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

31 (2) The State Department of Social Services shall hold criminal
32 record clearances in its active files for a minimum of two years
33 after an employee is no longer employed at a licensed facility in
34 order for the criminal record clearances to be transferred under this
35 section.

36 (h) If a licensee or facility is required by law to deny
37 employment or to terminate employment of any employee based
38 on written notification from the department that the employee has
39 a prior criminal conviction or is determined unsuitable for
40 employment under Section 1569.58, the licensee or facility shall



1 not incur civil liability or unemployment insurance liability as a
2 result of that denial or termination.

3 (i) Amendments to the provisions of this section made in the
4 1998 calendar year shall be implemented commencing 60 days
5 after the effective date of the act amending this section in the 1998
6 calendar year, except those provisions for the submission of
7 fingerprints for searching the records of the Federal Bureau of
8 Investigation, which shall be implemented commencing on
9 January 1, 1999.

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

12 1596.871. The Legislature recognizes the need to generate
13 timely and accurate positive fingerprint identification of
14 applicants as a condition of issuing licenses, permits, or
15 certificates of approval for persons to operate or provide direct
16 care services in a child care center or family child care home.
17 Therefore, the Legislature supports the use of the fingerprint
18 live-scan technology, as defined in the long-range plan of the
19 Department of Justice for fully automating the processing of
20 fingerprints and other data by the year 1999, otherwise known as
21 the California Crime Information Intelligence System (CAL-CII),
22 to be used for applicant fingerprints. It is the intent of the
23 Legislature in enacting this section to require the fingerprints of
24 those individuals whose contact with child day care facility clients
25 may pose a risk to the children's health and safety.

26 (a) (1) Before issuing a license or special permit to any person
27 to operate or manage a day care facility, the department shall
28 secure from an appropriate law enforcement agency a criminal
29 record to determine whether the applicant or any other person
30 specified in subdivision (b) has ever been convicted of a crime
31 other than a minor traffic violation or arrested for any crime
32 specified in Section 290 of the Penal Code, for violating Section
33 245 or 273.5, subdivision (b) of Section 273a or, prior to January
34 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for
35 any crime for which the department cannot grant an exemption if
36 the person was convicted and the person has not been exonerated.

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



1 (3) Except during the 2003–04 fiscal year, neither the
2 Department of Justice nor the department may charge a fee for the
3 fingerprinting of an applicant who will serve six or fewer children
4 or any family day care applicant for a license, or for obtaining a
5 criminal record of an applicant pursuant to this section.

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

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

13 (B) If the State Department of Social Services finds that the
14 applicant, or any other person specified in subdivision (b), is
15 awaiting trial for a crime other than a minor traffic violation, the
16 State Department of Social Services may cease processing the
17 application until the conclusion of the trial.

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

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

26 (E) An applicant and any other person specified in subdivision
27 (b) shall submit a second set of fingerprints to the Department of
28 Justice, for the purpose of searching the records of the Federal
29 Bureau of Investigation, in addition to the search required by
30 subdivision (a). If an applicant meets all other conditions for
31 licensure, except receipt of the Federal Bureau of Investigation's
32 criminal history information for the applicant and persons listed in
33 subdivision (b), the department may issue a license if the applicant
34 and each person described by subdivision (b) has signed and
35 submitted a statement that he or she has never been convicted of
36 a crime in the United States, other than a traffic infraction as
37 defined in paragraph (1) of subdivision (a) of Section 42001 of the
38 Vehicle Code. If, after licensure, the department determines that
39 the licensee or person specified in subdivision (b) has a criminal
40 record, the license may be revoked pursuant to Section 1596.885.



1 The department may also suspend the license pending an
2 administrative hearing pursuant to Section 1596.886.

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

5 (A) Adults responsible for administration or direct supervision
6 of staff.

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

8 (C) Any person who provides care and supervision to the
9 children.

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

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

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

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

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

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

34 (E) If the applicant is a firm, partnership, association, or
35 corporation, the chief executive officer, other person serving in
36 like capacity, or a person designated by the chief executive officer
37 as responsible for the operation of the facility, as designated by the
38 applicant agency.

39 (F) If the applicant is a local educational agency, the president
40 of the governing board, the school district superintendent, or a



1 person designated to administer the operation of the facility, as
2 designated by the local educational agency.

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

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

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

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

33 (c) (1) (A) Subsequent to initial licensure, any person
34 specified in subdivision (b) and not exempted from fingerprinting
35 shall, as a condition to employment, residence, or presence in a
36 child day care facility be fingerprinted and sign a declaration under
37 penalty of perjury regarding any prior criminal conviction. The
38 licensee shall submit these fingerprints to the Department of
39 Justice, along with a second set of fingerprints for the purpose of
40 searching the records of the Federal Bureau of Investigation, or to



1 comply with paragraph (1) of subdivision (h), prior to the person's
2 employment, residence, or initial presence in the child day care
3 facility.

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

30 (C) Documentation of the individual's clearance or exemption
31 shall be maintained by the licensee, and shall be available for
32 inspection. When live-scan technology is operational, as defined
33 in Section 1522.04, the Department of Justice shall notify the
34 department, as required by that section, and notify the licensee by
35 mail within 14 days of electronic transmission of the fingerprints
36 to the Department of Justice, if the person has no criminal record.
37 Any violation of the regulations adopted pursuant to Section
38 1522.04 shall result in the citation of a deficiency and an
39 immediate assessment of civil penalties in the amount of one
40 hundred dollars (\$100) per violation. The department may assess



1 civil penalties for continued violations, as permitted by Sections
2 1596.99 and 1597.62.

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

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

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



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

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

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

32 (e) The State Department of Social Services may not use a
33 record of arrest to deny, revoke, or terminate any application,
34 license, employment, or residence unless the department
35 investigates the incident and secures evidence, whether or not
36 related to the incident of arrest, that is admissible in an
37 administrative hearing to establish conduct by the person that may
38 pose a risk to the health and safety of any person who is or may
39 become a client. The State Department of Social Services is
40 authorized to obtain any arrest or conviction records or reports



1 from any law enforcement agency as necessary to the performance
2 of its duties to inspect, license, and investigate community care
3 facilities and individuals associated with a community care
4 facility.

5 (f) (1) After review of the record, the director may grant an
6 exemption from disqualification for a license or special permit as
7 specified in paragraphs (1) and (4) of subdivision (a), or for
8 employment, residence, or presence in a child day care facility as
9 specified in paragraphs (3), (4), and (5) of subdivision (c) if the
10 director has substantial and convincing evidence to support a
11 reasonable belief that the applicant and the person convicted of the
12 crime, if other than the applicant, are of good character so as to
13 justify issuance of the license or special permit or granting an
14 exemption for purposes of subdivision (c). However, an
15 exemption may not be granted pursuant to this subdivision if the
16 conviction was for any of the following offenses:

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

23 (B) A felony offense specified in Section 729 of the Business
24 and Professions Code or Section 206 or 215, subdivision (a) of
25 Section 347, subdivision (b) of Section 417, or subdivision (a) or
26 (b) of Section 451 of the Penal Code.

27 (2) The department may not prohibit a person from being
28 employed or having contact with clients in a facility on the basis
29 of a denied criminal record exemption request or arrest
30 information unless the department complies with the requirements
31 of Section 1596.8897.

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

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



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

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

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

