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AMENDED IN SENATE AUGUST 23, 2004
AMENDED IN SENATE AUGUST 9, 2004
AMENDED IN SENATE JUNE 17, 2004
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AMENDED IN ASSEMBLY MAY 7, 2003
AMENDED IN ASSEMBLY APRIL 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1240

Introduced by Assembly Member Mullin

February 21, 2003

An act to amend Sections 1522, 1568.09, 1569.17, and 1596.871 of the Health and Safety Code, relating to care facilities, *and declaring the urgency thereof, to take effect immediately* .

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 child 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. Existing law authorizes the department to permit an individual to transfer a current criminal record clearance, from one facility to another if certain conditions are met.

This bill would authorize, with respect to community care facilities and child day care facilities, any county office with department delegated licensing authority and the State Department of Social Services to accept a criminal record clearance or exemption from each other, and would authorize any county office with department delegated licensing authority to accept a criminal record clearance or exemption from another such county office.

Existing law authorizes the Department of Justice to provide subsequent arrest notification to any agency authorized to receive state summary criminal history information upon the arrest of any person whose fingerprints are maintained on file at the Department of Justice.

This bill would, with respect to community care facilities and child day care facilities, specify conditions under which the Department of Justice would be required to substitute the department or another county with department delegated licensing authority as a recipient of notification under this provision.

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 a 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 5 days, or for a maximum of 30 days in the case of a 2nd or subsequent violation, and by providing that a violation is grounds for denying an application for, or suspending or revoking, a license or administrator certificate.

The bill, in addition, would impose these penalties for failure of a foster family agency to submit fingerprints that a foster family agency is required under existing law to obtain from certified home applicants or to transfer a current criminal record clearance, when required.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~ ^{2/3}. 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~~
15 ~~this section to require the fingerprints of those individuals whose~~
16 ~~contact with community care clients may pose a risk to the clients'~~
17 ~~health and safety.~~
18 ~~(a) (1) Before issuing a license or special permit to any person~~
19 ~~or persons to operate or manage a community care facility, the~~
20 ~~State Department of Social Services shall secure from an~~
21 ~~appropriate law enforcement agency a criminal record to~~
22 ~~determine whether the applicant or any other person specified in~~
23 ~~subdivision (b) has ever been convicted of a crime other than a~~
24 ~~minor traffic violation or arrested for any crime specified in~~
25 ~~Section 290 of the Penal Code, for violating Section 245 or 273.5~~



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

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

9 (3) Except during the 2003-04 fiscal year, neither the
10 Department of Justice nor the State Department of Social Services
11 may charge a fee for the fingerprinting of an applicant for a license
12 or special permit to operate a facility providing nonmedical board,
13 room, and care for six or less children or for obtaining a criminal
14 record of the applicant pursuant to this section.

15 (4) The following shall apply to the criminal record
16 information:

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

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

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

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

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



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

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

17 (A) Adults responsible for administration or direct supervision
18 of staff.

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

20 (C) Any person who provides client assistance in dressing,
21 grooming, bathing, or personal hygiene. Any nurse assistant or
22 home health aide meeting the requirements of Section 1338.5 or
23 1736.6, respectively, who is not employed, retained, or contracted
24 by the licensee, and who has been certified or recertified on or after
25 July 1, 1998, shall be deemed to meet the criminal record clearance
26 requirements of this section. A certified nurse assistant and
27 certified home health aide who will be providing client assistance
28 and who falls under this exemption shall provide one copy of his
29 or her current certification, prior to providing care, to the
30 community care facility. The facility shall maintain the copy of the
31 certification on file as long as care is being provided by the
32 certified nurse assistant or certified home health aide at the facility.
33 Nothing in this paragraph restricts the right of the department to
34 exclude a certified nurse assistant or certified home health aide
35 from a licensed community care facility pursuant to Section 1558.

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

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



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

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

9 ~~(A) A medical professional as defined in department~~
10 ~~regulations who holds a valid license or certification from the~~
11 ~~person's governing California medical care regulatory entity and~~
12 ~~who is not employed, retained, or contracted by the licensee if all~~
13 ~~of the following apply:~~

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

17 ~~(ii) The person is providing time-limited specialized clinical~~
18 ~~care or services.~~

19 ~~(iii) The person is providing care or services within the~~
20 ~~person's scope of practice.~~

21 ~~(iv) The person is not a community care facility licensee or an~~
22 ~~employee of the facility.~~

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

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

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

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

30 ~~(C) Employees of a licensed home health agency and other~~
31 ~~members of licensed hospice interdisciplinary teams who have a~~
32 ~~contract with a client or resident of the facility and are in the~~
33 ~~facility at the request of that client or resident's legal~~
34 ~~decisionmaker. The exemption does not apply to a person who is~~
35 ~~a community care facility licensee or an employee of the facility.~~

36 ~~(D) Clergy and other spiritual caregivers who are performing~~
37 ~~services in common areas of the community care facility or who~~
38 ~~are advising an individual client at the request of, or with the~~
39 ~~permission of, the client or legal decisionmaker, are exempt from~~
40 ~~fingerprint and criminal background check requirements imposed~~



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

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

6 ~~(i) Members are not left alone with clients.~~

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

8 ~~(iii) The same organization does not conduct group activities~~
9 ~~for clients more often than defined by the department's~~
10 ~~regulations.~~

11 ~~(3) In addition to the exemptions in paragraph (2), the~~
12 ~~following persons in foster family homes, certified family homes,~~
13 ~~and small family homes are exempt from the requirements~~
14 ~~applicable under paragraph (1):~~

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

19 ~~(B) Parents of a foster child's friends when the foster child is~~
20 ~~visiting the friend's home and the friend, foster parent, or both are~~
21 ~~also present.~~

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

25 ~~(A) Unless contraindicated by the client's individualized~~
26 ~~program plan (IPP) or needs and service plan, a spouse, significant~~
27 ~~other, relative, or close friend of a client, or an attendant or a~~
28 ~~facilitator for a client with a developmental disability if the~~
29 ~~attendant or facilitator is not employed, retained, or contracted by~~
30 ~~the licensee. This exemption applies only if the person is visiting~~
31 ~~the client or providing direct care and supervision to the client.~~

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

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

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

36 ~~(iii) The volunteer does not provide any client assistance with~~
37 ~~dressing, grooming, bathing, or personal hygiene other than~~
38 ~~washing of hands.~~

39 ~~(5) (A) In addition to the exemptions specified in paragraph~~
40 ~~(2), the following persons in adult residential and social~~



1 ~~rehabilitation facilities, unless contraindicated by the client's~~
2 ~~individualized program plan (IPP) or needs and services plan, are~~
3 ~~exempt from the requirements applicable under paragraph (1): a~~
4 ~~spouse, significant other, relative, or close friend of a client, or an~~
5 ~~attendant or a facilitator for a client with a developmental~~
6 ~~disability if the attendant or facilitator is not employed, retained,~~
7 ~~or contracted by the licensee. This exemption applies only if the~~
8 ~~person is visiting the client or providing direct care and~~
9 ~~supervision to that client.~~

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

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

16 (e) ~~(1) Subsequent to initial licensure, any person specified in~~
17 ~~subdivision (b) and not exempted from fingerprinting shall, as a~~
18 ~~condition to employment, residence, or presence in a community~~
19 ~~care facility, be fingerprinted and sign a declaration under penalty~~
20 ~~of perjury regarding any prior criminal convictions. The licensee~~
21 ~~shall submit these fingerprints to the Department of Justice, along~~
22 ~~with a second set of fingerprints for the purpose of searching the~~
23 ~~records of the Federal Bureau of Investigation, or to comply with~~
24 ~~paragraph (1) of subdivision (h), prior to the person's~~
25 ~~employment, residence, or initial presence in the community care~~
26 ~~facility. These fingerprints shall be on a card provided by the State~~
27 ~~Department of Social Services or sent by electronic transmission~~
28 ~~in a manner approved by the State Department of Social Services~~
29 ~~and the Department of Justice for the purpose of obtaining a~~
30 ~~permanent set of fingerprints, and shall be submitted to the~~
31 ~~Department of Justice by the licensee. A licensee's failure to~~
32 ~~submit fingerprints to the Department of Justice or to comply with~~
33 ~~paragraph (1) of subdivision (h), as required in this section, shall~~
34 ~~result in the citation of a deficiency and the immediate assessment~~
35 ~~of civil penalties in the amount of one hundred dollars (\$100) per~~
36 ~~violation, per day for a maximum of five days, unless the violation~~
37 ~~is a second or subsequent violation within a 12-month period in~~
38 ~~which case the civil penalties shall be in the amount of one hundred~~
39 ~~dollars (\$100) per violation for a maximum of 30 days, and shall~~
40 ~~be grounds for disciplining the licensee pursuant to Section 1550.~~



1 ~~The department may assess civil penalties for continued violations~~
2 ~~as permitted by Section 1548. The fingerprints shall then be~~
3 ~~submitted to the State Department of Social Services for~~
4 ~~processing. Upon request of the licensee, who shall enclose a~~
5 ~~self-addressed stamped postcard for this purpose, the Department~~
6 ~~of Justice shall verify receipt of the fingerprints.~~

7 ~~(2) Within 14 calendar days of the receipt of the fingerprints,~~
8 ~~the Department of Justice shall notify the State Department of~~
9 ~~Social Services of the criminal record information, as provided for~~
10 ~~in subdivision (a). If no criminal record information has been~~
11 ~~recorded, the Department of Justice shall provide the licensee and~~
12 ~~the State Department of Social Services with a statement of that~~
13 ~~fact within 14 calendar days of receipt of the fingerprints.~~
14 ~~Documentation of the individual's clearance or exemption shall be~~
15 ~~maintained by the licensee and be available for inspection. 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 ~~When live scan technology is operational, as defined in Section~~
20 ~~1522.04, the Department of Justice shall notify the State~~
21 ~~Department of Social Services, as required by that section, and~~
22 ~~shall also notify the licensee by mail, within 14 days of electronic~~
23 ~~transmission of the fingerprints to the Department of Justice, if the~~
24 ~~person has no criminal history recorded. A violation of the~~
25 ~~regulations adopted pursuant to Section 1522.04 shall result in the~~
26 ~~citation of a deficiency and an immediate assessment of civil~~
27 ~~penalties in the amount of one hundred dollars (\$100) per~~
28 ~~violation, per day for a maximum of five days, unless the violation~~
29 ~~is a second or subsequent violation within a 12-month period in~~
30 ~~which case the civil penalties shall be in the amount of one hundred~~
31 ~~dollars (\$100) per violation for a maximum of 30 days, and shall~~
32 ~~be grounds for disciplining the licensee pursuant to Section 1550.~~
33 ~~The department may assess civil penalties for continued violations~~
34 ~~as permitted by Section 1548.~~

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



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

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

29 (5) ~~Concurrently with notifying the licensee pursuant to~~
30 ~~paragraph (3), the department shall notify the affected individual~~
31 ~~of his or her right to seek an exemption pursuant to subdivision (g).~~
32 ~~The individual may seek an exemption only if the licensee~~
33 ~~terminates the person's employment or removes the person from~~
34 ~~the facility after receiving notice from the department pursuant to~~
35 ~~paragraph (3).~~

36 (d) (1) ~~Before issuing a license, special permit, or certificate~~
37 ~~of approval to any person or persons to operate or manage a foster~~
38 ~~family home or certified family home as described in Section~~
39 ~~1506, the State Department of Social Services or other approving~~
40 ~~authority shall secure from an appropriate law enforcement~~



1 agency a criminal record to determine whether the applicant or any
2 person specified in subdivision (b) has ever been convicted of a
3 crime 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.

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

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

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

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

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

30 (D) An applicant for a foster family home license or for
31 certification as a family home, and any other person specified in
32 subdivision (b), shall submit a set of fingerprints to the Department
33 of Justice for the purpose of searching the criminal records of the
34 Federal Bureau of Investigation, in addition to the criminal records
35 search required by subdivision (a). If an applicant meets all other
36 conditions for licensure, except receipt of the Federal Bureau of
37 Investigation's criminal history information for the applicant and
38 all persons described in subdivision (b), the department may issue
39 a license, or the foster family agency may issue a certificate of
40 approval, if the applicant, and each person described in



1 subdivision (b), has signed and submitted a statement that he or she
2 has never been convicted of a crime in the United States, other than
3 a traffic infraction, as defined in paragraph (1) of subdivision (a)
4 of Section 42001 of the Vehicle Code. If, after licensure or
5 certification, the department determines that the licensee, certified
6 foster parent, or any person specified in subdivision (b) has a
7 criminal record, the license may be revoked pursuant to Section
8 1550 and the certificate of approval revoked pursuant to
9 subdivision (b) of Section 1534. The department may also suspend
10 the license pending an administrative hearing pursuant to Section
11 1550.5.

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

19 (6) (A) The foster family agency shall obtain fingerprints from
20 certified home applicants and from persons specified in
21 subdivision (b) and shall submit them directly to the Department
22 of Justice or send them by electronic transmission in a manner
23 approved by the State Department of Social Services. A foster
24 family home licensee or foster family agency shall submit these
25 fingerprints to the Department of Justice, along with a second set
26 of fingerprints for the purpose of searching the records of the
27 Federal Bureau of Investigation or to comply with paragraph (1)
28 of subdivision (b) prior to the person's employment, residence, or
29 initial presence. A foster family agency's failure to submit
30 fingerprints to the Department of Justice, or comply with
31 paragraph (1) of subdivision (h), as required in this section, shall
32 result in a citation of a deficiency, and the immediate civil penalties
33 of one hundred dollars (\$100) per violation, per day for a
34 maximum of five days, unless the violation is a second or
35 subsequent violation within a 12-month period in which case the
36 civil penalties shall be in the amount of one hundred dollars (\$100)
37 per violation for a maximum of 30 days, and shall be grounds for
38 disciplining the licensee pursuant to Section 1550. A violation of
39 the regulation adopted pursuant to Section 1522.04 shall result in
40 the citation of a deficiency and an immediate assessment of civil



1 ~~penalties in the amount of one hundred dollars (\$100) per~~
2 ~~violation, per day for a maximum of five days, unless the violation~~
3 ~~is a second or subsequent violation within a 12-month period in~~
4 ~~which case the civil penalties shall be in the amount of one hundred~~
5 ~~dollars (\$100) per violation for a maximum of 30 days, and shall~~
6 ~~be grounds for disciplining the foster family agency pursuant to~~
7 ~~Section 1550. A licensee's failure to submit fingerprints to the~~
8 ~~Department of Justice, or comply with paragraph (1) of~~
9 ~~subdivision (h), as required in this section, may result in the~~
10 ~~citation of a deficiency and immediate civil penalties of one~~
11 ~~hundred dollars (\$100) per violation. A licensee's violation of~~
12 ~~regulations adopted pursuant to Section 1522.04 may result in the~~
13 ~~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 (e) 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 (e), 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 (e). 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 ~~(3) The following shall apply to a criminal record clearance or~~
28 ~~exemption from the department or a county office with department~~
29 ~~delegated licensing authority:~~

30 ~~(A) A county office with department delegated licensing~~
31 ~~authority may accept a clearance or exemption from the~~
32 ~~department.~~

33 ~~(B) The department may accept a clearance or exemption from~~
34 ~~any county office with department delegated licensing authority.~~

35 ~~(C) A county office with department delegated licensing~~
36 ~~authority may accept a clearance or exemption from any other~~
37 ~~county office with department delegated licensing authority.~~

38 ~~(4) With respect to notifications issued by the Department of~~
39 ~~Justice pursuant to Section 11105.2 of the Penal Code concerning~~
40 ~~an individual whose criminal record clearance was originally~~



1 ~~processed by the department or a county office with department~~
2 ~~delegated licensing authority, all of the following shall apply:~~

3 ~~(A) The Department of Justice shall process a request from the~~
4 ~~department or a county office with department delegated licensing~~
5 ~~authority to receive the notice only if all of the following~~
6 ~~conditions are met:~~

7 ~~(i) The request shall be submitted to the Department of Justice~~
8 ~~by the agency to be substituted to receive the notification.~~

9 ~~(ii) The request shall be for the same applicant type as the type~~
10 ~~for which the original clearance was obtained.~~

11 ~~(iii) The request shall contain all prescribed data elements and~~
12 ~~format protocols pursuant to a written agreement between the~~
13 ~~department and the Department of Justice.~~

14 ~~(B) (i) On or before January 7, 2005, the department shall~~
15 ~~notify the Department of Justice of all county offices that have~~
16 ~~department delegated licensing authority.~~

17 ~~(ii) The department shall notify the Department of Justice~~
18 ~~within 15 calendar days of the date on which a new county office~~
19 ~~receives department delegated licensing authority or a county's~~
20 ~~delegated licensing authority is rescinded.~~

21 ~~(C) The Department of Justice shall charge the department or~~
22 ~~a county office with department delegated licensing authority a fee~~
23 ~~for each time a request to substitute the recipient agency is received~~
24 ~~for purposes of this paragraph. This fee shall not exceed the cost~~
25 ~~of providing the service.~~

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

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

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



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

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

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

21 *SECTION 1. Section 1522 of the Health and Safety Code, as*
22 *amended by Chapter 229 of the Statutes of 2004, is amended to*
23 *read:*

24 1522. The Legislature recognizes the need to generate timely
25 and accurate positive fingerprint identification of applicants as a
26 condition of issuing licenses, permits, or certificates of approval
27 for persons to operate or provide direct care services in a
28 community care facility, foster family home, or a certified family
29 home of a licensed foster family agency. Therefore, the
30 Legislature supports the use of the fingerprint live-scan
31 technology, as identified in the long-range plan of the Department
32 of Justice for fully automating the processing of fingerprints and
33 other data by the year 1999, otherwise known as the California
34 Crime Information Intelligence System (CAL-CII), to be used for
35 applicant fingerprints. It is the intent of the Legislature in enacting
36 this section to require the fingerprints of those individuals whose
37 contact with community care clients may pose a risk to the clients'
38 health and safety.

39 (a) (1) Before issuing a license or special permit to any person
40 or persons to operate or manage a community care facility, the



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

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

15 (3) Except during the 2003–04 and 2004–05 fiscal years, no fee
16 ~~shall be charged by year, neither~~ the Department of Justice ~~or nor~~
17 the State Department of Social Services *may charge a fee* for the
18 fingerprinting of an applicant for a license or special permit to
19 operate a facility providing nonmedical board, room, and care for
20 six or less children or for obtaining a criminal record of the
21 applicant pursuant to this section.

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

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

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

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

37 (D) If the State Department of Social Services finds after
38 licensure that the licensee, or any other person specified in
39 paragraph (2) of subdivision (b), has been convicted of a crime
40 other than a minor traffic violation, the license may be revoked,



1 unless the director grants an exemption pursuant to subdivision
2 (g).

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

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

24 (A) Adults responsible for administration or direct supervision
25 of staff.

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

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



1 exclude a certified nurse assistant or certified home health aide
2 from a licensed community care facility pursuant to Section 1558.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (C) Employees of a licensed home health agency and other
38 members of licensed hospice interdisciplinary teams who have a
39 contract with a client or resident of the facility and are in the
40 facility at the request of that client or resident's legal



1 decisionmaker. The exemption ~~shall~~ *does* not apply to a person
2 who is a community care facility licensee or an employee of the
3 facility.

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

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

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

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

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

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

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

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

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

33 (A) Unless contraindicated by the client's individualized
34 program plan (IPP) or needs and service plan, a spouse, significant
35 other, relative, or close friend of a client, or an attendant or a
36 facilitator for a client with a developmental disability if the
37 attendant or facilitator is not employed, retained, or contracted by
38 the licensee. This exemption applies only if the person is visiting
39 the client or providing direct care and supervision to the client.

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



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

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

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

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

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

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

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



1 paragraph (1) of subdivision (h), as required in this section, shall
2 result in the citation of a deficiency and the immediate assessment
3 of civil penalties in the amount of one hundred dollars (\$100) per
4 violation-, *per day for a maximum of five days, unless the violation*
5 *is a second or subsequent violation within a 12-month period in*
6 *which case the civil penalties shall be in the amount of one hundred*
7 *dollars (\$100) per violation for a maximum of 30 days, and shall*
8 *be grounds for disciplining the licensee pursuant to Section 1550.*
9 The department may assess civil penalties for continued violations
10 as 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 five days, unless the violation*
37 *is a second or subsequent violation within a 12-month period in*
38 *which case the civil penalties shall be in the amount of one hundred*
39 *dollars (\$100) per violation for a maximum of 30 days, and shall*
40 *be grounds for disciplining the licensee pursuant to Section 1550.*



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

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

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

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



1 terminates the person's employment or removes the person from
2 the facility after receiving notice from the department pursuant to
3 paragraph (3).

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

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

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

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

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

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

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

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



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

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

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



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

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

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



1 been convicted of a crime other than a minor traffic violation, the
2 application shall be denied, unless the director grants an
3 exemption pursuant to subdivision (g).

4 (8) If the State Department of Social Services finds after
5 licensure or the granting of the certificate of approval that the
6 licensee, certified foster parent, or any other person specified in
7 paragraph (2) of subdivision (b), has been convicted of a crime
8 other than a minor traffic violation, the license or certificate of
9 approval may be revoked by the department or the foster family
10 agency, whichever is applicable, unless the director grants an
11 exemption pursuant to subdivision (g). A licensee's failure to
12 comply with the department's prohibition of employment, contact
13 with clients, or presence in the facility as required by paragraph (3)
14 of subdivision (c) shall be grounds for disciplining the licensee
15 pursuant to Section 1550.

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

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



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

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

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

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

37 (ii) Notwithstanding clause (i), the director may grant an
38 exemption regarding the conviction for an offense described in
39 paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5
40 of the Penal Code, if the employee or prospective employee has



1 been rehabilitated as provided in Section 4852.03 of the Penal
2 Code, has maintained the conduct required in Section 4852.05 of
3 the Penal Code for at least 10 years, and has the recommendation
4 of the district attorney representing the employee's county of
5 residence, or if the employee or prospective employee has
6 received a certificate of rehabilitation pursuant to Chapter 3.5
7 (commencing with Section 4852.01) of Title 6 of Part 3 of the
8 Penal Code.

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

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

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



1 (A) A county office with department delegated licensing
2 authority may accept a clearance or exemption from the
3 department.

4 (B) The department may accept a clearance or exemption from
5 any county office with department delegated licensing authority.

6 (C) A county office with department delegated licensing
7 authority may accept a clearance or exemption from any other
8 county office with department delegated licensing authority.

9 (4) With respect to notifications issued by the Department of
10 Justice pursuant to Section 11105.2 of the Penal Code concerning
11 an individual whose criminal record clearance was originally
12 processed by the department or a county office with department
13 delegated licensing authority, all of the following shall apply:

14 (A) The Department of Justice shall process a request from the
15 department or a county office with department delegated licensing
16 authority to receive the notice only if all of the following conditions
17 are met:

18 (i) The request shall be submitted to the Department of Justice
19 by the agency to be substituted to receive the notification.

20 (ii) The request shall be for the same applicant type as the type
21 for which the original clearance was obtained.

22 (iii) The request shall contain all prescribed data elements and
23 format protocols pursuant to a written agreement between the
24 department and the Department of Justice.

25 (B) (i) On or before January 7, 2005, the department shall
26 notify the Department of Justice of all county offices that have
27 department delegated licensing authority.

28 (ii) The department shall notify the Department of Justice
29 within 15 calendar days of the date on which a new county office
30 receives department delegated licensing authority or a county's
31 delegated licensing authority is rescinded.

32 (C) The Department of Justice shall charge the department or
33 a county office with department delegated licensing authority a fee
34 for each time a request to substitute the recipient agency is received
35 for purposes of this paragraph. This fee shall not exceed the cost
36 of providing the service.

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



1 (j) If a licensee or facility is required by law to deny
2 employment or to terminate employment of any employee based
3 on written notification from the state department that the employee
4 has a prior criminal conviction or is determined unsuitable for
5 employment under Section 1558, the licensee or facility shall not
6 incur civil liability or unemployment insurance liability as a result
7 of that denial or termination.

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

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

26 (l) Amendments to this section made in the 1999 portion of the
27 1999–2000 Regular Session shall be implemented commencing
28 60 days after the effective date of the act amending this section in
29 the 1999 portion of the 1999–2000 Regular Session, except that
30 those provisions for the submission of fingerprints for searching
31 the records of the Federal Bureau of Investigation shall be
32 implemented 90 days after the effective date of that act.

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

35 1568.09. It is the intent of the Legislature in enacting this
36 section to require the fingerprints of those individuals whose
37 contact with residents of residential care facilities for persons with
38 a chronic, life-threatening illness may pose a risk to the residents'
39 health and safety.



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

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

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

24 (3) The following shall apply to the criminal record
25 information:

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

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

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

39 (D) If the State Department of Social Services finds after
40 licensure that the licensee, or any other person specified in



1 paragraph (2) of subdivision (b), has been convicted of a crime
2 other than a minor traffic violation, the license may be revoked,
3 unless the director grants an exemption pursuant to subdivision (f).

4 (E) An applicant and any other person specified in subdivision
5 (b) shall submit to the Department of Justice a second set of
6 fingerprints for the purpose of searching the records of the Federal
7 Bureau of Investigation, in addition to the search required by this
8 subdivision. If an applicant meets all other conditions for
9 licensure, except receipt of the Federal Bureau of Investigation's
10 criminal history information for the applicant and persons listed in
11 subdivision (b), the department may issue a license if the applicant
12 and each person described by subdivision (b) has signed and
13 submitted a statement that he or she has never been convicted of
14 a crime in the United States, other than a traffic infraction as
15 defined in paragraph (1) of subdivision (a) of Section 42001 of the
16 Vehicle Code. If, after licensure, the department determines that
17 the licensee or person specified in subdivision (b) has a criminal
18 record, the license may be revoked pursuant to subdivision (a) of
19 Section 1568.082. The department may also suspend the license
20 pending an administrative hearing pursuant to subdivision (b) of
21 Section 1568.082.

22 (b) In addition to the applicant, the provisions of this section
23 shall be applicable to criminal convictions of the following
24 persons:

25 (1) Adults responsible for administration or direct supervision
26 of staff of the facility.

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

28 (3) Any person who provides resident assistance in dressing,
29 grooming, bathing, or personal hygiene. Any nurse assistant or
30 home health aide meeting the requirements of Section 1338.5 or
31 1736.6, respectively, who is not employed, retained, or contracted
32 by the licensee, and who has been certified or recertified on or after
33 July 1, 1998, shall be deemed to meet the criminal record clearance
34 requirements of this section. A certified nurse assistant and
35 certified home health aide who will be providing client assistance
36 and who falls under this exemption shall provide one copy of his
37 or her current certification, prior to providing care, to the
38 residential care facility for persons with chronic, life-threatening
39 illness. The facility shall maintain the copy of the certification on
40 file as long as care is being provided by the certified nurse assistant



1 or certified home health aide at the facility. Nothing in this
2 paragraph restricts the right of the department to exclude a
3 certified nurse assistant or certified home health aide from a
4 licensed residential care facility for persons with chronic,
5 life-threatening illness pursuant to Section 1568.092.

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

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

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

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

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

39 (B) These fingerprints shall be on a card provided by the State
40 Department of Social Services for the purpose of obtaining a



1 permanent set of fingerprints and submitted to the Department of
2 Justice by the licensee or sent by electronic transmission in a
3 manner approved by the State Department of Social Services. A
4 licensee's failure to submit fingerprints to the Department of
5 Justice, or to comply with paragraph (1) of subdivision (g), as
6 required in this section, shall result in the citation of a deficiency
7 and an immediate assessment of civil penalties in the amount of
8 one hundred dollars (\$100) per violation, per day for a maximum
9 of five days, unless the violation is a second or subsequent
10 violation within a 12-month period in which case the civil
11 penalties shall be in the amount of one hundred dollars (\$100) per
12 violation for a maximum of 30 days, and shall be grounds for
13 disciplining the licensee pursuant to Section 1568.082. The State
14 Department of Social Services may assess civil penalties for
15 continued violations as allowed in Section 1568.0822. The
16 fingerprints shall then be submitted to the State Department of
17 Social Services for processing. The licensee shall maintain and
18 make available for inspection documentation of the individual's
19 clearance or exemption.

20 (2) A violation of the regulations adopted pursuant to Section
21 1522.04 shall result in the citation of a deficiency and an
22 immediate assessment of civil penalties in the amount of one
23 hundred dollars (\$100) per violation per day for a maximum of
24 five days, unless the violation is a second or subsequent violation
25 within a 12-month period in which case the civil penalties shall be
26 in the amount of one hundred dollars (\$100) per violation for a
27 maximum of 30 days, and shall be grounds for disciplining the
28 licensee pursuant to Section 1568.082. The department may assess
29 civil penalties for continued violations as permitted by Section
30 1568.0822.

31 (3) Within 14 calendar days of the receipt of the fingerprints,
32 the Department of Justice shall notify the State Department of
33 Social Services of the criminal record information, as provided for
34 in this subdivision. If no criminal record information has been
35 recorded, the Department of Justice shall provide the licensee and
36 the State Department of Social Services with a statement of that
37 fact within 14 calendar days of receipt of the fingerprints. If new
38 fingerprints are required for processing, the Department of Justice
39 shall, within 14 calendar days from the date of receipt of the
40 fingerprints, notify the licensee that the fingerprints were illegible.



1 When live-scan technology is operational, as defined in Section
2 1522.04, the Department of Justice shall notify the department, as
3 required by that section, and shall notify the licensee by mail
4 within 14 days of electronic transmission of the fingerprints to the
5 Department of Justice, if the person has no criminal history record.

6 (4) Except for persons specified in paragraph (2) of subdivision
7 (b), the licensee shall endeavor to ascertain the previous
8 employment history of persons required to be fingerprinted under
9 this subdivision. If it is determined by the State Department of
10 Social Services, on the basis of the fingerprints submitted to the
11 Department of Justice, that the person has been convicted of a sex
12 offense against a minor, an offense specified in Section 243.4,
13 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the
14 department shall notify the licensee to act immediately to
15 terminate the person's employment, remove the person from the
16 residential care facility, or bar the person from entering the
17 residential care facility. The department may subsequently grant
18 an exemption pursuant to subdivision (f). If the conviction was for
19 another crime, except a minor traffic violation, the licensee shall,
20 upon notification by the department, act immediately to either (1)
21 terminate the person's employment, remove the person from the
22 residential care facility, or bar the person from entering the
23 residential care facility; or (2) seek an exemption pursuant to
24 subdivision (f). The department shall determine if the person shall
25 be allowed to remain in the facility until a decision on the
26 exemption is rendered. A licensee's failure to comply with the
27 department's prohibition of employment, contact with clients, or
28 presence in the facility as required by this paragraph shall result in
29 a citation of deficiency and an immediate assessment of civil
30 penalties by the department against the licensee, in the amount of
31 one hundred dollars (\$100) per violation, per day for a maximum
32 of five days, unless the violation is a second or subsequent
33 violation within a 12-month period in which case the civil
34 penalties shall be in the amount of one hundred dollars (\$100) per
35 violation for a maximum of 30 days, and shall be grounds for
36 disciplining the licensee pursuant to Section 1568.082.

37 (5) The department may issue an exemption on its own motion
38 pursuant to subdivision (f) if the person's criminal history
39 indicates that the person is of good character based on the age,
40 seriousness, and frequency of the conviction or convictions. The



1 department, in consultation with interested parties, shall develop
2 regulations to establish the criteria to grant an exemption pursuant
3 to this paragraph.

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

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

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

37 (e) The State Department of Social Services may not use a
38 record of arrest to deny, revoke, or terminate any application,
39 license, employment, or residence unless the department
40 investigates the incident and secures evidence, whether or not



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

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

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

28 (B) A felony offense specified in Section 729 of the Business
29 and Professional Code or Section 206 or 215, subdivision (a) of
30 Section 347, subdivision (b) of Section 417, or subdivision (a) of
31 Section 451 of the Penal Code.

32 (2) The department may not prohibit a person from being
33 employed or having contact with clients in a facility on the basis
34 of a denied criminal record exemption request or arrest
35 information unless the department complies with the requirements
36 of Section 1568.092.

37 (g) (1) For purposes of compliance with this section, the
38 department may permit an individual to transfer a current criminal
39 record clearance, as defined in subdivision (a), from one facility
40 to another, as long as the criminal record clearance has been



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

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

15 (h) If a licensee or facility is required by law to deny
16 employment or to terminate employment of any employee based
17 on written notification from the state department that the employee
18 has a prior criminal conviction or is determined unsuitable for
19 employment under Section 1568.092, the licensee or facility shall
20 not incur civil liability or unemployment insurance liability as a
21 result of that denial or termination.

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

26 (2) Paragraph (1) shall cease to be implemented when the
27 department adopts emergency regulations pursuant to Section
28 1522.04, and shall become inoperative when permanent
29 regulations are adopted under that section.

30 (j) Amendments to the provisions of this section made in the
31 1998 calendar year shall be implemented commencing 60 days
32 after the effective date of the act amending this section in the 1998
33 calendar year, except those provisions for the submission of
34 fingerprints for searching the records of the Federal Bureau of
35 Investigation, which shall be implemented commencing January
36 1, 1999.

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

39 1569.17. The Legislature recognizes the need to generate
40 timely and accurate positive fingerprint identification of



1 applicants as a condition of issuing licenses, permits, or
2 certificates of approval for persons to operate or provide direct
3 care services in a residential care facility for the elderly. The
4 Legislature supports the use of the fingerprint live-scan
5 technology, as identified in the long-range plan of the Department
6 of Justice for fully automating the processing of fingerprints and
7 other data by the year 1999. It is the intent of the Legislature in
8 enacting this section to require the fingerprints of those individuals
9 whose contact with clients of residential care facilities for the
10 elderly may pose a risk to the clients' health and safety.

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

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

26 (3) 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 been
30 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 (f).

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 (f).

6 (E) An applicant and any other person specified in subdivision
7 (b) shall submit a second set of fingerprints to the Department of
8 Justice, for the purpose of searching the records of the Federal
9 Bureau of Investigation, in addition to the search required by
10 subdivision (a). If an applicant meets all other conditions for
11 licensure, except receipt of the Federal Bureau of Investigation's
12 criminal history information for the applicant and persons listed in
13 subdivision (b), the department may issue a license if the applicant
14 and each person described by subdivision (b) has signed and
15 submitted a statement that he or she has never been convicted of
16 a crime in the United States, other than a traffic infraction as
17 defined in paragraph (1) of subdivision (a) of Section 42001 of the
18 Vehicle Code. If, after licensure, the department determines that
19 the licensee or person specified in subdivision (b) has a criminal
20 record, the license may be revoked pursuant to Section 1569.50.
21 The department may also suspend the license pending an
22 administrative hearing pursuant to Sections 1569.50 and 1569.51.

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

25 (1) (A) Adults responsible for administration or direct
26 supervision of staff.

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

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



1 or her current certification, prior to providing care, to the
2 residential care facility for the elderly. The facility shall maintain
3 the copy of the certification on file as long as the care is being
4 provided by the certified nurse assistant or certified home health
5 aide at the facility. Nothing in this paragraph restricts the right of
6 the department to exclude a certified nurse assistant or certified
7 home health aide from a licensed residential care facility for the
8 elderly pursuant to Section 1569.58.

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

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

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

20 (2) The following persons are exempt from requirements
21 applicable under paragraph (1):

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

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

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

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

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

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

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

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

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



1 (E) Licensed or certified medical professionals are exempt
2 from fingerprint and criminal background check requirements
3 imposed by community care licensing. This exemption does not
4 apply to a person who is a community care facility licensee or an
5 employee of the facility.

6 (F) Employees of licensed home health agencies and members
7 of licensed hospice interdisciplinary teams who have contact with
8 a resident of a residential care facility at the request of the resident
9 or resident's legal decisionmaker are exempt from fingerprint and
10 criminal background check requirements imposed by community
11 care licensing. This exemption does not apply to a person who is
12 a community care facility licensee or an employee of the facility.

13 (G) Clergy and other spiritual caregivers who are performing
14 services in common areas of the residential care facility, or who are
15 advising an individual resident at the request of, or with
16 permission of, the resident, are exempt from fingerprint and
17 criminal background check requirements imposed by community
18 care licensing. This exemption does not apply to a person who is
19 a community care facility licensee or an employee of the facility.

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

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

26 (c) (1) (A) Subsequent to initial licensure, any person
27 required to be fingerprinted pursuant to subdivision (b) shall, as a
28 condition to employment, residence, or presence in a residential
29 facility for the elderly, be fingerprinted and sign a declaration
30 under penalty of perjury regarding any prior criminal convictions.
31 The licensee shall submit these fingerprints, along with a second
32 set of fingerprints for the purpose of searching the records of the
33 Federal Bureau of Investigation, to the Department of Justice, or
34 to comply with paragraph (1) of subdivision (g) prior to the
35 person's employment, residence, or initial presence in the
36 residential care facility for the elderly.

37 (B) These fingerprints shall be on a fingerprint card provided
38 by the State Department of Social Services, or sent by electronic
39 transmission in a manner approved by the State Department of
40 Social Services and the Department of Justice and submitted to the



1 Department of Justice by the licensee. A licensee's failure to
2 submit fingerprints to the Department of Justice, or to comply with
3 paragraph (1) of subdivision (g), as required in this section, shall
4 result in the citation of a deficiency and an immediate assessment
5 of civil penalties in the amount of one hundred dollars (\$100) per
6 violation, per day for a maximum of five days, unless the violation
7 is a second or subsequent violation within a 12-month period in
8 which case the civil penalties shall be in the amount of one hundred
9 dollars (\$100) per violation for a maximum of 30 days, and shall
10 be grounds for disciplining the licensee pursuant to Section
11 1569.50. The State Department of Social Services may assess civil
12 penalties for continued violations as permitted by Section
13 1569.49. The licensee shall then submit these fingerprints to the
14 State Department of Social Services for processing.
15 Documentation of the individual's clearance or exemption shall be
16 maintained by the licensee and be available for inspection. When
17 live-scan technology is operational, as defined in Section 1522.04,
18 the Department of Justice shall notify the department, as required
19 by that section, and notify the licensee by mail within 14 days of
20 electronic transmission of the fingerprints to the Department of
21 Justice, if the person has no criminal record. A violation of the
22 regulations adopted pursuant to Section 1522.04 shall result in the
23 citation of a deficiency and an immediate assessment of civil
24 penalties in the amount of one hundred dollars (\$100) per
25 violation, per day for a maximum of five days, unless the violation
26 is a second or subsequent violation within a 12-month period in
27 which case the civil penalties shall be in the amount of one hundred
28 dollars (\$100) per violation for a maximum of 30 days, and shall
29 be grounds for disciplining the licensee pursuant to Section
30 1569.50. The department may assess civil penalties for continued
31 violations as permitted by Section 1569.49.

32 (2) Within 14 calendar days of the receipt of the fingerprints,
33 the Department of Justice shall notify the State Department of
34 Social Services of the criminal record information, as provided for
35 in this subdivision. If no criminal record information has been
36 recorded, the Department of Justice shall provide the licensee and
37 the State Department of Social Services with a statement of that
38 fact within 14 calendar days of receipt of the fingerprints. If new
39 fingerprints are required for processing, the Department of Justice



1 shall, within 14 calendar days from the date of receipt of the
2 fingerprints, notify the licensee that the fingerprints were illegible.

3 (3) 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 the State Department of Social Services
7 determines, on the basis of the fingerprints submitted to the
8 Department of Justice, that the person has been convicted of a sex
9 offense against a minor, an offense specified in Section 243.4,
10 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State
11 Department of Social Services shall notify the licensee in writing
12 within 15 calendar days of the receipt of the notification from the
13 Department of Justice to act immediately to terminate the person's
14 employment, remove the person from the residential care facility
15 for the elderly, or bar the person from entering the residential care
16 facility for the elderly. The State Department of Social Services
17 may subsequently grant an exemption pursuant to subdivision (f).
18 If the conviction was for another crime, except a minor traffic
19 violation, the licensee shall, upon notification by the State
20 Department of Social Services, act immediately to either (1)
21 terminate the person's employment, remove the person from the
22 residential care facility for the elderly, or bar the person from
23 entering the residential care facility for the elderly or (2) seek an
24 exemption pursuant to subdivision (f). The department shall
25 determine if the person shall be allowed to remain in the facility
26 until a decision on the exemption is rendered by the department.
27 A licensee's failure to comply with the department's prohibition
28 of employment, contact with clients, or presence in the facility as
29 required by this paragraph shall result in a citation of deficiency
30 and an immediate assessment of civil penalties by the department
31 against the licensee, in the amount of one hundred dollars (\$100)
32 per violation, per day for a maximum of five days, unless the
33 violation is a second or subsequent violation within a 12-month
34 period in which case the civil penalties shall be in the amount of
35 one hundred dollars (\$100) per violation for a maximum of 30
36 days, and shall be grounds for disciplining the licensee pursuant
37 to Section 1569.50.

38 (4) The department may issue an exemption on its own motion
39 pursuant to subdivision (f) if the person's criminal history
40 indicates that the person is of good character based on the age,



1 seriousness, and frequency of the conviction or convictions. The
2 department, in consultation with interested parties, shall develop
3 regulations to establish the criteria to grant an exemption pursuant
4 to this paragraph.

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

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

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

39 (e) The State Department of Social Services may not use a
40 record of arrest to deny, revoke, or terminate any application,



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

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

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

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

34 (2) The director shall notify in writing the licensee or the
35 applicant of his or her decision within 60 days of receipt of all
36 information from the applicant and other sources determined
37 necessary by the director for the rendering of a decision pursuant
38 to this subdivision.

39 (3) The department may not prohibit a person from being
40 employed or having contact with clients in a facility on the basis



1 of a denied criminal record exemption request or arrest
2 information unless the department complies with the requirements
3 of Section 1569.58.

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

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

23 (h) If a licensee or facility is required by law to deny
24 employment or to terminate employment of any employee based
25 on written notification from the department that the employee has
26 a prior criminal conviction or is determined unsuitable for
27 employment under Section 1569.58, the licensee or facility shall
28 not incur civil liability or unemployment insurance liability as a
29 result of that denial or termination.

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

37 ~~SEC. 4. Section 1596.871 of the Health and Safety Code is~~
38 ~~amended to read:~~

39 ~~1596.871. The Legislature recognizes the need to generate~~
40 ~~timely and accurate positive fingerprint identification of~~



1 applicants as a condition of issuing licenses, permits, or
2 certificates of approval for persons to operate or provide direct
3 care services in a child care center or family child care home.
4 Therefore, the Legislature supports the use of the fingerprint
5 live-scan technology, as defined in the long-range plan of the
6 Department of Justice for fully automating the processing of
7 fingerprints and other data by the year 1999, otherwise known as
8 the California Crime Information Intelligence System (CAL-CI);
9 to be used for applicant fingerprints. It is the intent of the
10 Legislature in enacting this section to require the fingerprints of
11 those individuals whose contact with child day care facility clients
12 may pose a risk to the children's health and safety.

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

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

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

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

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

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



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

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

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

12 ~~(E) An applicant and any other person specified in subdivision~~
13 ~~(b) shall submit a second set of fingerprints to the Department of~~
14 ~~Justice, for the purpose of searching the records of the Federal~~
15 ~~Bureau of Investigation, in addition to the search required by~~
16 ~~subdivision (a). If an applicant meets all other conditions for~~
17 ~~licensure, except receipt of the Federal Bureau of Investigation's~~
18 ~~criminal history information for the applicant and persons listed in~~
19 ~~subdivision (b), the department may issue a license if the applicant~~
20 ~~and each person described by subdivision (b) has signed and~~
21 ~~submitted a statement that he or she has never been convicted of~~
22 ~~a crime in the United States, other than a traffic infraction as~~
23 ~~defined in paragraph (1) of subdivision (a) of Section 42001 of the~~
24 ~~Vehicle Code. If, after licensure, the department determines that~~
25 ~~the licensee or person specified in subdivision (b) has a criminal~~
26 ~~record, the license may be revoked pursuant to Section 1596.885.~~
27 ~~The department may also suspend the license pending an~~
28 ~~administrative hearing pursuant to Section 1596.886.~~

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

31 ~~(A) Adults responsible for administration or direct supervision~~
32 ~~of staff.~~

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

34 ~~(C) Any person who provides care and supervision to the~~
35 ~~children.~~

36 ~~(D) Any staff person, volunteer, or employee who has contact~~
37 ~~with the children.~~

38 ~~(i) A volunteer providing time-limited specialized services~~
39 ~~shall be exempt from the requirements of this subdivision if this~~
40 ~~person is directly supervised by the licensee or a facility employee~~



1 ~~with a criminal record clearance or exemption, the volunteer~~
2 ~~spends no more than 16 hours per week at the facility, and the~~
3 ~~volunteer is not left alone with children in care.~~

4 ~~(ii) A student enrolled or participating at an accredited~~
5 ~~educational institution shall be exempt from the requirements of~~
6 ~~this subdivision if the student is directly supervised by the licensee~~
7 ~~or a facility employee with a criminal record clearance or~~
8 ~~exemption, the facility has an agreement with the educational~~
9 ~~institution concerning the placement of the student, the student~~
10 ~~spends no more than 16 hours per week at the facility, and the~~
11 ~~student is not left alone with children in care.~~

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

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

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

20 ~~(E) If the applicant is a firm, partnership, association, or~~
21 ~~corporation, the chief executive officer, other person serving in~~
22 ~~like capacity, or a person designated by the chief executive officer~~
23 ~~as responsible for the operation of the facility, as designated by the~~
24 ~~applicant agency.~~

25 ~~(F) If the applicant is a local educational agency, the president~~
26 ~~of the governing board, the school district superintendent, or a~~
27 ~~person designated to administer the operation of the facility, as~~
28 ~~designated by the local educational agency.~~

29 ~~(G) Additional officers of the governing body of the applicant,~~
30 ~~or other persons with a financial interest in the applicant, as~~
31 ~~determined necessary by the department by regulation. The~~
32 ~~criteria used in the development of these regulations shall be based~~
33 ~~on the person's capability to exercise substantial influence over the~~
34 ~~operation of the facility.~~

35 ~~(H) This section does not apply to employees of child care and~~
36 ~~development programs under contract with the State Department~~
37 ~~of Education who have completed a criminal records clearance as~~
38 ~~part of an application to the Commission on Teacher~~
39 ~~Credentialing, and who possess a current credential or permit~~
40 ~~issued by the commission, including employees of child care and~~



1 development programs that serve both children subsidized under,
2 and children not subsidized under, a State Department of
3 Education contract. The Commission on Teacher Credentialing
4 shall notify the department upon revocation of a current credential
5 or permit issued to an employee of a child care and development
6 program under contract with the State Department of Education.

7 (1) This section does not apply to employees of a child care and
8 development program operated by a school district, county office
9 of education, or community college district under contract with the
10 State Department of Education who have completed a criminal
11 record clearance as a condition of employment. The school
12 district, county office of education, or community college district
13 upon receiving information that the status of an employee's
14 criminal record clearance has changed shall submit that
15 information to the department.

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

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

30 (B) These fingerprints shall be on a card provided by the State
31 Department of Social Services for the purpose of obtaining a
32 permanent set of fingerprints and submitted to the Department of
33 Justice by the licensee or sent by electronic transmission in a
34 manner approved by the State Department of Social Services. A
35 licensee's failure to submit fingerprints to the Department of
36 Justice, or to comply with paragraph (1) of subdivision (h), as
37 required in this section, shall result in the citation of a deficiency,
38 and an immediate assessment of civil penalties in the amount of
39 one hundred dollars (\$100) per violation, per day for a maximum
40 of five days, unless the violation is a second or subsequent



1 violation within a 12-month period in which case the civil
2 penalties shall be in the amount of one hundred dollars (\$100) per
3 violation for a maximum of 30 days, and shall be grounds for
4 disciplining the licensee pursuant to Section 1596.885 or Section
5 1596.886. The State Department of Social Services may assess
6 civil penalties for continued violations permitted by Sections
7 1596.99 and 1597.62. The fingerprints shall then be submitted to
8 the State Department of Social Services for processing. Within 14
9 calendar days of the receipt of the fingerprints, the Department of
10 Justice shall notify the State Department of Social Services of the
11 criminal record information, as provided in this subdivision. If no
12 criminal record information has been recorded, the Department of
13 Justice shall provide the licensee and the State Department of
14 Social Services with a statement of that fact within 14 calendar
15 days of receipt of the fingerprints. If new fingerprints are required
16 for processing, the Department of Justice shall, within 14 calendar
17 days from the date of receipt of the fingerprints, notify the licensee
18 that the fingerprints were illegible.

19 (C) Documentation of the individual's clearance or exemption
20 shall be maintained by the licensee, and shall be available for
21 inspection. When live-scan technology is operational, as defined
22 in Section 1522.04, the Department of Justice shall notify the
23 department, as required by that section, and notify the licensee by
24 mail within 14 days of electronic transmission of the fingerprints
25 to the Department of Justice, if the person has no criminal record.
26 Any violation of the regulations adopted pursuant to Section
27 1522.04 shall result in the citation of a deficiency and an
28 immediate assessment of civil penalties in the amount of one
29 hundred dollars (\$100) per violation, per day for a maximum of
30 five days, unless the violation is a second or subsequent violation
31 within a 12-month period in which case the civil penalties shall be
32 in the amount of one hundred dollars (\$100) per violation for a
33 maximum of 30 days, and shall be grounds for disciplining the
34 licensee pursuant to Section 1596.885 or Section 1596.886. The
35 department may assess civil penalties for continued violations, as
36 permitted by Sections 1596.99 and 1597.62.

37 (2) Except for persons specified in paragraph (2) of subdivision
38 (b), the licensee shall endeavor to ascertain the previous
39 employment history of persons required to be fingerprinted under
40 this subdivision. If it is determined by the department, on the basis



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

28 (3) The department may issue an exemption on its own motion
29 pursuant to subdivision (f) 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 (4) 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 (f).
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) For purposes of this section or any other provision of~~
4 ~~this chapter, a conviction means a plea or verdict of guilty or a~~
5 ~~conviction following a plea of nolo contendere. Any action that the~~
6 ~~department is permitted to take following the establishment of a~~
7 ~~conviction may be taken when the time for appeal has elapsed,~~
8 ~~when the judgment of conviction has been affirmed on appeal, or~~
9 ~~when an order granting probation is made suspending the~~
10 ~~imposition of sentence, notwithstanding a subsequent order~~
11 ~~pursuant to Sections 1203.4 and 1203.4a of the Penal Code~~
12 ~~permitting the person to withdraw his or her plea of guilty and to~~
13 ~~enter a plea of not guilty, or setting aside the verdict of guilty, or~~
14 ~~dismissing the accusation, information, or indictment. For~~
15 ~~purposes of this section or any other provision of this chapter, the~~
16 ~~record of a conviction, or a copy thereof certified by the clerk of~~
17 ~~the court or by a judge of the court in which the conviction~~
18 ~~occurred, shall be conclusive evidence of the conviction. For~~
19 ~~purposes of this section or any other provision of this chapter, the~~
20 ~~arrest disposition report certified by the Department of Justice, or~~
21 ~~documents admissible in a criminal action pursuant to Section~~
22 ~~969b of the Penal Code, shall be prima facie evidence of~~
23 ~~conviction, notwithstanding any other provision of law~~
24 ~~prohibiting the admission of these documents in a civil or~~
25 ~~administrative action.~~

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

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



1 facilities and individuals associated with a community care
2 facility.

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

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

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

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

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

33 (h) (1) For the purposes of compliance with this section, the
34 department may permit an individual to transfer a current criminal
35 record clearance, as defined in subdivision (a), from one facility
36 to another, as long as the criminal record clearance has been
37 processed through a state licensing district office, and is being
38 transferred to another facility licensed by a state licensing district
39 office. The request shall be in writing to the department, and shall
40 include a copy of the person's driver's license or valid



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

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

11 ~~(3) The following shall apply to a criminal record clearance or~~
12 ~~exemption from the department or a county office with department~~
13 ~~delegated licensing authority:~~

14 ~~(A) A county office with department delegated licensing~~
15 ~~authority may accept a clearance or exemption from the~~
16 ~~department.~~

17 ~~(B) The department may accept a clearance or exemption from~~
18 ~~any county office with department delegated licensing authority.~~

19 ~~(C) A county office with department delegated licensing~~
20 ~~authority may accept a clearance or exemption from any other~~
21 ~~county office with department delegated licensing authority.~~

22 ~~(4) With respect to notifications issued by the Department of~~
23 ~~Justice pursuant to Section 11105.2 of the Penal Code concerning~~
24 ~~an individual whose criminal record clearance was originally~~
25 ~~processed by the department or a county office with department~~
26 ~~delegated licensing authority, all of the following shall apply:~~

27 ~~(A) The Department of Justice shall process a request from the~~
28 ~~department or a county office with department delegated licensing~~
29 ~~authority to receive the notice, only if all of the following~~
30 ~~conditions are met:~~

31 ~~(i) The request shall be submitted to the Department of Justice~~
32 ~~by the agency to be substituted to receive the notification.~~

33 ~~(ii) The request shall be for the same applicant type as the type~~
34 ~~for which the original clearance was obtained.~~

35 ~~(iii) The request shall contain all prescribed data elements and~~
36 ~~format protocols pursuant to a written agreement between the~~
37 ~~department and the Department of Justice.~~

38 ~~(B) (i) On or before January 7, 2005, the department shall~~
39 ~~notify the Department of Justice of all county offices that have~~
40 ~~department delegated licensing authority.~~



1 ~~(ii) The department shall notify the Department of Justice~~
2 ~~within 15 calendar days of the date on which a new county office~~
3 ~~receives department delegated licensing authority or a county's~~
4 ~~delegated licensing authority is rescinded.~~

5 ~~(C) The Department of Justice shall charge the department or~~
6 ~~a county office with department delegated licensing authority a fee~~
7 ~~for each time a request to substitute the recipient agency is received~~
8 ~~for purposes of this paragraph. This fee shall not exceed the cost~~
9 ~~of providing the service.~~

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

16 *SEC. 4. Section 1596.871 of the Health and Safety Code, as*
17 *amended by Chapter 229 of the Statutes of 2004, is amended to*
18 *read:*

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

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



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

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

7 (3) Except during the 2003–04 and 2004–05 fiscal years, ~~no fee~~
8 ~~shall be charged by year; neither~~ the Department of Justice ~~or nor~~
9 the department *may charge a fee* for the fingerprinting of an
10 applicant who will serve six or fewer children or any family day
11 care applicant for a license, or for obtaining a criminal record of
12 an applicant pursuant to this section.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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



1 (C) Documentation of the individual's clearance or exemption
2 shall be maintained by the licensee, and shall be available for
3 inspection. When live-scan technology is operational, as defined
4 in Section 1522.04, the Department of Justice shall notify the
5 department, as required by that section, and notify the licensee by
6 mail within 14 days of electronic transmission of the fingerprints
7 to the Department of Justice, if the person has no criminal record.
8 Any violation of the regulations adopted pursuant to Section
9 1522.04 shall result in the citation of a deficiency and an
10 immediate assessment of civil penalties in the amount of one
11 hundred dollars (\$100) per violation-, *per day for a maximum of*
12 *five days, unless the violation is a second or subsequent violation*
13 *within a 12-month period in which case the civil penalties shall be*
14 *in the amount of one hundred dollars (\$100) per violation for a*
15 *maximum of 30 days, and shall be grounds for disciplining the*
16 *licensee pursuant to Section 1596.885 or Section 1596.886. The*
17 department may assess civil penalties for continued violations, as
18 permitted by Sections 1596.99 and 1597.62.

19 (2) 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 it is determined by the department, on the basis
23 of fingerprints submitted to the Department of Justice, that the
24 person has been convicted of a sex offense against a minor, an
25 offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the
26 Penal Code, or a felony, the State Department of Social Services
27 shall notify the licensee to act immediately to terminate the
28 person's employment, remove the person from the child day care
29 facility, or bar the person from entering the child day care facility.
30 The department may subsequently grant an exemption pursuant to
31 subdivision (f). If the conviction was for another crime except a
32 minor traffic violation, the licensee shall, upon notification by the
33 State Department of Social Services, act immediately to either (1)
34 terminate the person's employment, remove the person from the
35 child day care facility, or bar the person from entering the child day
36 care facility; or (2) seek an exemption pursuant to subdivision (f).
37 The department shall determine if the person shall be allowed to
38 remain in the facility until a decision on the exemption is rendered.
39 A licensee's failure to comply with the department's prohibition
40 of employment, contact with clients, or presence in the facility as



1 required by this paragraph shall *result in a citation of deficiency*
2 *and an immediate assessment of civil penalties by the department*
3 *against the licensee, in the amount of one hundred dollars (\$100)*
4 *per violation, per day for a maximum of five days, unless the*
5 *violation is a second or subsequent violation within a 12-month*
6 *period in which case the civil penalties shall be in the amount of*
7 *one hundred dollars (\$100) per violation for a maximum of 30*
8 *days, and shall be grounds for disciplining the licensee pursuant*
9 *to Section 1596.885 or 1596.886.*

10 (3) 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 (4) Concurrently with notifying the licensee pursuant to
18 paragraph (3), 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 (3).

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



1 arrest disposition report certified by the Department of Justice, or
2 documents admissible in a criminal action pursuant to Section
3 969b of the Penal Code, shall be prima facie evidence of
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 ~~shall~~ *may* not use
12 a 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 or special permit as
26 specified in paragraphs (1) and (4) of subdivision (a), or for
27 employment, residence, or presence in a child day care facility as
28 specified in paragraphs (3), (4), and (5) 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 good character so as to
32 justify issuance of the license or special permit or granting an
33 exemption for purposes of subdivision (c). However, ~~no~~ *an*
34 exemption ~~shall~~ *may not* be granted pursuant to this subdivision if
35 the 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) or
6 (b) of Section 451 of the Penal Code.

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

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

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

33 (3) *The following shall apply to a criminal record clearance or
34 exemption from the department or a county office with department
35 delegated licensing authority:*

36 (A) *A county office with department delegated licensing
37 authority may accept a clearance or exemption from the
38 department.*

39 (B) *The department may accept a clearance or exemption from
40 any county office with department delegated licensing authority.*



1 (C) A county office with department delegated licensing
2 authority may accept a clearance or exemption from any other
3 county office with department delegated licensing authority.

4 (4) With respect to notifications issued by the Department of
5 Justice pursuant to Section 11105.2 of the Penal Code concerning
6 an individual whose criminal record clearance was originally
7 processed by the department or a county office with department
8 delegated licensing authority, all of the following shall apply:

9 (A) The Department of Justice shall process a request from the
10 department or a county office with department delegated licensing
11 authority to receive the notice, only if all of the following
12 conditions are met:

13 (i) The request shall be submitted to the Department of Justice
14 by the agency to be substituted to receive the notification.

15 (ii) The request shall be for the same applicant type as the type
16 for which the original clearance was obtained.

17 (iii) The request shall contain all prescribed data elements and
18 format protocols pursuant to a written agreement between the
19 department and the Department of Justice.

20 (B) (i) On or before January 7, 2005, the department shall
21 notify the Department of Justice of all county offices that have
22 department delegated licensing authority.

23 (ii) The department shall notify the Department of Justice
24 within 15 calendar days of the date on which a new county office
25 receives department delegated licensing authority or a county's
26 delegated licensing authority is rescinded.

27 (C) The Department of Justice shall charge the department or
28 a county office with department delegated licensing authority a fee
29 for each time a request to substitute the recipient agency is received
30 for purposes of this paragraph. This fee shall not exceed the cost
31 of providing the service.

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

38 SEC. 5. This act is an urgency statute necessary for the
39 immediate preservation of the public peace, health, or safety



1 within the meaning of Article IV of the Constitution and shall go
2 into immediate effect. The facts constituting the necessity are:
3 California’s most vulnerable populations in community care
4 and child day care facilities are exposed to persons who may pose
5 an immediate risk to their health and safety because licensees
6 currently face only minimal civil penalties for violations and are
7 therefore undeterred from permitting persons who do not have
8 criminal record clearances or exemptions from being present in
9 their facilities. Thus, to reduce these risks as soon as possible by
10 enhancing civil penalties, it is necessary that this act take effect
11 immediately.

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