

ASSEMBLY BILL

No. 1720

Introduced by Assembly Member Holden

January 27, 2022

An act to amend Section 1522 of, and to add Sections 1522.6 and 1522.7 to, the Health and Safety Code, relating to community care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1720, as introduced, Holden. Community care facilities: criminal background checks.

The existing California Community Care Facilities Act requires the State Department of Social Services to license and regulate community care facilities. The existing act requires the department to obtain a criminal history record for all applicants for licenses for these facilities and specified individuals connected with these facilities, including employees, volunteers, and officers of these facilities. The existing act prohibits persons with certain criminal convictions from obtaining a license and further prohibits these specified individuals from being present in a community care facility before obtaining either a criminal record clearance or a criminal record exemption from the department.

This bill would require the department to establish a process to grant a simplified criminal record exemption to an applicant for a license or special permit to operate or manage a community care facility and the specified individuals connected with these facilities. The bill would prohibit the department from requiring an applicant for a license to disclose their criminal history information.

The bill would require the department to post information on its internet website concerning applications, including the total number of

applicants for initial certification. The bill would require the department to publish data in aggregate and without any personally identifying information. The bill would require the department to collect the specified demographic information about individuals subject to the criminal background check process and to issue a report, on or before January 1, 2024, determining whether this data shows demographic disparities within the existing criminal background check process.

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

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

1 SECTION 1. Section 1522 of the Health and Safety Code is
2 amended to read:

3 1522. The Legislature recognizes the need to generate timely
4 and accurate positive fingerprint identification of applicants as a
5 condition of issuing licenses, permits, or certificates of approval
6 for persons to operate or provide direct care services in a
7 community care facility, foster family home, certified family home
8 or resource family of a licensed foster family agency, or a tribally
9 approved home. Therefore, the Legislature supports the use of the
10 fingerprint live-scan technology, as identified in the long-range
11 plan of the Department of Justice for fully automating the
12 processing of fingerprints and other data by the year 1999,
13 otherwise known as the California Crime Information Intelligence
14 System (CAL-CII), to be used for applicant fingerprints. It is the
15 intent of the Legislature in enacting this section to require the
16 fingerprints of those individuals whose contact with community
17 care clients may pose a risk to the clients' health and safety. An
18 individual shall be required to obtain either a criminal record
19 clearance or a criminal record exemption from the State Department
20 of Social Services before ~~the individual's~~ *their* initial presence in
21 a community care facility or certified family home.

22 (a) (1) Before and, as applicable, subsequent to issuing a license
23 or special permit to a person to operate or manage a community
24 care facility, the State Department of Social Services shall secure
25 from an appropriate law enforcement agency a criminal record to
26 determine whether the applicant or any other person specified in
27 subdivision (b) has been convicted of a crime other than an
28 infraction or arrested for ~~any~~ a crime specified in Section 290 of

1 the Penal Code, or for violating Section 245, 273ab, or 273.5 of
2 the Penal Code, subdivision (b) of Section 273a of the Penal Code,
3 or, prior to January 1, 1994, paragraph (2) of Section 273a of the
4 Penal Code, or for ~~any~~ a crime for which the department is
5 prohibited from granting a criminal record exemption pursuant to
6 subdivision (g).

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

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

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

16 (B) If the State Department of Social Services finds that the
17 applicant, or any other person specified in subdivision (b), is
18 awaiting trial for a crime other than an infraction the State
19 Department of Social Services may cease processing the criminal
20 record information until the conclusion of the trial.

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

24 (D) If the State Department of Social Services finds, after
25 licensure, that the licensee, or any other person specified in
26 paragraph (1) of subdivision (b), has been convicted of a crime
27 other than an infraction, the license may be revoked, unless the
28 department grants an exemption pursuant to subdivision (g).

29 (E) An applicant and any other person specified in subdivision
30 (b) shall submit fingerprint images and related information to the
31 Department of Justice for the purpose of searching the criminal
32 records of the Federal Bureau of Investigation, in addition to the
33 criminal records search required by this subdivision. If an applicant
34 and all other persons described in subdivision (b) meet all of the
35 conditions for licensure, except receipt of the Federal Bureau of
36 Investigation's criminal offender record information search
37 response for the applicant or any of the persons described in
38 subdivision (b), the department may issue a license ~~if the applicant~~
39 ~~and each~~ to a person described in subdivision (b) *who* has signed
40 and submitted a statement that ~~the person has~~ *they have* never been

1 convicted of a crime in the United States, other than an infraction.
2 If, after licensure, or the issuance of a certificate of approval of a
3 certified family home by a foster family agency, the department
4 determines that the licensee or any other person specified in
5 subdivision (b) has a criminal record, the department may revoke
6 the license, or require a foster family agency to revoke the
7 certificate of approval, pursuant to Section 1550. The department
8 may also suspend the license or require a foster family agency to
9 suspend the certificate of approval pending an administrative
10 hearing pursuant to Section 1550.5.

11 (F) The State Department of Social Services shall develop
12 procedures to provide the individual's state and federal criminal
13 history information with the written notification of the individual's
14 exemption denial or revocation based on the criminal record.
15 Receipt of the criminal history information shall be optional on
16 the part of the individual, as set forth in the agency's procedures.
17 The procedure shall protect the confidentiality and privacy of the
18 individual's record, and the criminal history information shall not
19 be made available to the employer.

20 (G) Notwithstanding any other law, the department ~~is authorized~~
21 ~~to~~ may provide an individual with a copy of the individual's state
22 or federal level criminal offender record information search
23 response as provided to that department by the Department of
24 Justice if the department has denied a criminal background
25 clearance based on this information and the individual makes a
26 written request to the department for a copy specifying an address
27 to which it is to be sent. The state or federal level criminal offender
28 record information search response shall not be modified or altered
29 from its form or content as provided by the Department of Justice
30 and shall be provided to the address specified by the individual in
31 the individual's written request. The department shall retain a copy
32 of the individual's written request and the response and date
33 provided.

34 (b) (1) In addition to the applicant, this section ~~shall be~~ *is*
35 applicable to criminal record clearances and exemptions for the
36 following persons:

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

1 (B) Any adult, other than a client, residing in the facility,
2 certified family home, resource family home, or tribally approved
3 home.

4 (C) Any person who provides client assistance in dressing,
5 grooming, bathing, or personal hygiene. Any nurse assistant or
6 home health aide meeting the requirements of Section 1338.5 or
7 1736.6, respectively, who is not employed, retained, or contracted
8 by the licensee, and who has been certified or recertified on or
9 after July 1, 1998, shall be deemed to meet the criminal record
10 clearance requirements of this section. A certified nurse assistant
11 and certified home health aide who will be providing client
12 assistance and who falls under this exemption shall provide one
13 copy of their current certification, prior to providing care, to the
14 community care facility. The facility shall maintain the copy of
15 the certification on file as long as care is being provided by the
16 certified nurse assistant or certified home health aide at the facility
17 or in a certified family home or resource family home of a foster
18 family agency. This paragraph does not restrict the right of the
19 department to exclude a certified nurse assistant or certified home
20 health aide from a licensed community care facility or certified
21 family home or resource family home of a foster family agency
22 pursuant to Section 1558.

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

25 (E) Any adult who works in a community care facility that is
26 eligible to accept placement of a dependent child.

27 (F) If the applicant is a firm, partnership, association, or
28 corporation, the chief executive officer or other person serving in
29 like capacity.

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

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

38 (A) A medical professional, as defined in department
39 regulations, who holds a valid license or certification from the
40 person's governing California medical care regulatory entity and

1 who is not employed, retained, or contracted by the licensee if all
2 of the following apply:

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

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

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

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

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

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

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

16 (iii) When clients are present in the room in which the repair
17 person or contractor is working, a staff person who has a criminal
18 record clearance or exemption is also present.

19 (C) Employees of a licensed home health agency and other
20 members of licensed hospice interdisciplinary teams who have a
21 contract with a client or resident of the facility, certified family
22 home, or resource family home and are in the facility, certified
23 family home, or resource family home at the request of that client
24 or resident's legal decisionmaker. The exemption does not apply
25 to a person who is a community care facility licensee or an
26 employee of the facility.

27 (D) Clergy and other spiritual caregivers who are performing
28 services in common areas of the community care facility, certified
29 family home, resource family home, or tribally approved home or
30 who are advising an individual client at the request of, or with the
31 permission of, the client or legal decisionmaker, are exempt from
32 fingerprint and criminal background check requirements imposed
33 by community care licensing. This exemption does not apply to a
34 person who is a community care licensee or employee of the
35 facility.

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

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

39 (ii) Members do not transport clients off the facility, certified
40 family home, or resource family home premises.

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

3 (3) In addition to the exemptions in paragraph (2), the following
4 persons in foster family homes, resource family homes, certified
5 family homes, tribally approved homes, and small family homes
6 are exempt from the requirements applicable under paragraph (1):

7 (A) Adult friends and family of the foster parent, who come
8 into the home to visit for a length of time no longer than defined
9 by the department in regulations, provided that the adult friends
10 and family of the foster parent are not left alone with the foster
11 children. However, the foster parent, acting as a reasonable and
12 prudent parent, as defined in paragraph (2) of subdivision (a) of
13 Section 362.04 of the Welfare and Institutions Code, may allow
14 *their* adult friends and family to provide short-term care to the
15 foster child and act as an appropriate occasional short-term
16 babysitter for the child.

17 (B) Parents of a foster child's friend when the foster child is
18 visiting the friend's home and the friend, foster parent, or both are
19 also present. However, the foster parent, acting as a reasonable
20 and prudent parent, may allow the parent of the foster child's friend
21 to act as an appropriate, occasional short-term babysitter for the
22 child without the friend being present.

23 (C) Individuals who are engaged by a foster parent to provide
24 short-term care to the child for periods not to exceed 24 hours.
25 Caregivers shall use a reasonable and prudent parent standard in
26 selecting appropriate individuals to act as appropriate occasional
27 short-term babysitters.

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

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

38 (B) A volunteer if all of the following apply:

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

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

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

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

16 (B) This subdivision does not prevent a licensee from requiring
17 a criminal record clearance of any individual exempt from the
18 requirements of this section, provided that the individual has client
19 contact.

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

22 (c) (1) Subsequent to initial licensure, a person specified in
23 subdivision (b) who is not exempted from fingerprinting shall
24 obtain either a criminal record clearance or an exemption from
25 disqualification pursuant to subdivision (g) from the State
26 Department of Social Services prior to employment, residence, or
27 initial presence in the facility. A person specified in subdivision
28 (b) who is not exempt from fingerprinting shall be fingerprinted
29 and shall sign a declaration under penalty of perjury regarding any
30 prior criminal convictions. The licensee shall submit fingerprint
31 images and related information to the Department of Justice and
32 the Federal Bureau of Investigation, through the Department of
33 Justice, for a state and federal level criminal offender record
34 information search, or comply with paragraph (1) of subdivision
35 (h). These fingerprint images and related information shall be sent
36 by electronic transmission in a manner approved by the State
37 Department of Social Services and the Department of Justice for
38 the purpose of obtaining a permanent set of fingerprints, and shall
39 be submitted to the Department of Justice by the licensee. A
40 licensee's failure to prohibit the employment, residence, or initial

presence of a person specified in subdivision (b) who is not exempt from fingerprinting and who has not received either a criminal record clearance or an exemption from disqualification pursuant to subdivision (g) or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprint images and related information shall then be submitted to the Department of Justice for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints. *The department shall not require the person to disclose their criminal history information.*

(2) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. Documentation of the individual's clearance or exemption from disqualification shall be maintained by the licensee and be available for inspection. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible, the Department of Justice shall notify the State Department of Social Services, as required by Section 1522.04, and shall also notify the licensee by mail, within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless

1 the violation is a second or subsequent violation within a 12-month
2 period in which case the civil penalties shall be in the amount of
3 one hundred dollars (\$100) per violation for a maximum of 30
4 days, and shall be grounds for disciplining the licensee pursuant
5 to Section 1550. The department may assess civil penalties for
6 continued violations as permitted by Section 1548.

7 (3) Except for persons specified in subdivision (b) who are
8 exempt from fingerprinting, the licensee shall endeavor to ascertain
9 the previous employment history of persons required to be
10 fingerprinted. If it is determined by the State Department of Social
11 Services, on the basis of the fingerprint images and related
12 information submitted to the Department of Justice, that subsequent
13 to obtaining a criminal record clearance or exemption from
14 disqualification pursuant to subdivision (g), the person has been
15 convicted of, or is awaiting trial for, a sex offense against a minor,
16 or has been convicted for an offense specified in Section 243.4,
17 273a, 273ab, 273d, 273g, or 368 of the Penal Code, or a felony,
18 the State Department of Social Services shall notify the licensee
19 to act immediately to terminate the person's employment, remove
20 the person from the community care facility, or bar the person
21 from entering the community care facility. The State Department
22 of Social Services may subsequently grant an exemption from
23 disqualification pursuant to subdivision (g). If the conviction or
24 arrest was for another crime, except an infraction, the licensee
25 shall, upon notification by the State Department of Social Services,
26 act immediately to either (A) terminate the person's employment,
27 remove the person from the community care facility, or bar the
28 person from entering the community care facility; or (B) seek an
29 exemption from disqualification pursuant to subdivision (g). The
30 State Department of Social Services shall determine if the person
31 shall be allowed to remain in the facility until a decision on the
32 exemption from disqualification is rendered. A licensee's failure
33 to comply with the department's prohibition of employment,
34 contact with clients, or presence in the facility as required by this
35 paragraph shall result in a citation of deficiency and an immediate
36 assessment of civil penalties in the amount of one hundred dollars
37 (\$100) per violation per day and shall be grounds for disciplining
38 the licensee pursuant to Section 1550.

39 (4) The department may issue an exemption from
40 disqualification on its own motion pursuant to subdivision (g) if

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

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

14 (d) (1) Before and, as applicable, subsequent to issuing a license
15 or certificate of approval to ~~any~~ *a* person or persons to operate a
16 foster family home, certified family home as described in Section
17 1506, or resource family pursuant to Section 1517 of this code or
18 Section 16519.5 of the Welfare and Institutions Code, the State
19 Department of Social Services or other approving authority shall
20 secure California and Federal Bureau of Investigation criminal
21 history information to determine whether the applicant or any
22 person specified in subdivision (b) who is not exempt from
23 fingerprinting has ever been convicted of a crime other than an
24 infraction or arrested for ~~any~~ *a* crime specified in subdivision (c)
25 of Section 290 of the Penal Code, for violating Section 245, 273ab,
26 or 273.5, subdivision (b) of Section 273a, or, prior to January 1,
27 1994, paragraph (2) of Section 273a, of the Penal Code, or for ~~any~~
28 *a* crime for which the department is prohibited from granting a
29 criminal record exemption pursuant to subdivision (g). The State
30 Department of Social Services or other approving authority shall
31 not issue a license or certificate of approval to ~~any~~ *a* foster family
32 home, certified family home, or resource family applicant who
33 has not obtained both a California and Federal Bureau of
34 Investigation criminal record clearance or exemption from
35 disqualification pursuant to subdivision (g).

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

38 (3) Neither the Department of Justice nor the State Department
39 of Social Services may charge a fee for the fingerprinting of an
40 applicant for a license, special permit, or certificate of approval

1 described in this subdivision. The record, if any, shall be taken
2 into consideration when evaluating a prospective applicant.

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

4 (A) If the applicant or other persons specified in subdivision
5 (b) who are not exempt from fingerprinting have convictions that
6 would make the applicant's home unfit as a foster family home, a
7 certified family home, or resource family, the license, special
8 permit, certificate of approval, or presence shall be denied.

9 (B) If the State Department of Social Services finds that the
10 applicant, or any person specified in subdivision (b) who is not
11 exempt from ~~fingerprinting~~ *fingerprinting*, is awaiting trial for a
12 crime other than an infraction, the State Department of Social
13 Services or other approving authority may cease processing the
14 criminal record information until the conclusion of the trial.

15 (C) For purposes of this subdivision, a criminal record clearance
16 provided under Section 8712 of the Family Code may be used by
17 the department or other approving authority.

18 (D) To the same extent required for federal funding, a person
19 specified in subdivision (b) who is not exempt from fingerprinting
20 shall submit a set of fingerprint images and related information to
21 the Department of Justice and the Federal Bureau of Investigation,
22 through the Department of Justice, for a state and federal level
23 criminal offender record information search, in addition to the
24 criminal records search required by subdivision (a).

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

32 (6) (A) Subsequent to initial licensure, certification, or approval,
33 a person specified in subdivision (b) who is not exempt from
34 fingerprinting shall obtain both a California and Federal Bureau
35 of Investigation criminal record clearance, or an exemption from
36 disqualification pursuant to subdivision (g), prior to employment,
37 residence, or initial presence in the foster family home, certified
38 family home, or resource family home. A foster family home
39 licensee or foster family agency shall submit fingerprint images
40 and related information of persons specified in subdivision (b)

1 who are not exempt from fingerprinting to the Department of
2 Justice and the Federal Bureau of Investigation, through the
3 Department of Justice, for a state and federal level criminal
4 offender record information search, or to comply with paragraph
5 (1) of subdivision (h). A foster family home licensee's or a foster
6 family agency's failure to either prohibit the employment,
7 residence, or initial presence of a person specified in subdivision
8 (b) who is not exempt from fingerprinting and who has not received
9 either a criminal record clearance or an exemption from
10 disqualification pursuant to subdivision (g), or comply with
11 paragraph (1) of subdivision (h), as required in this section, shall
12 result in a citation of a deficiency, and the immediate civil penalties
13 of one hundred dollars (\$100) per violation per day for a maximum
14 of five days, unless the violation is a second or subsequent violation
15 within a 12-month period in which case the civil penalties shall
16 be in the amount of one hundred dollars (\$100) per violation for
17 a maximum of 30 days, and shall be grounds for disciplining the
18 licensee pursuant to Section 1550. A violation of the regulation
19 adopted pursuant to Section 1522.04 shall result in the citation of
20 a deficiency and an immediate assessment of civil penalties in the
21 amount of one hundred dollars (\$100) per violation per day for a
22 maximum of five days, unless the violation is a second or
23 subsequent violation within a 12-month period in which case the
24 civil penalties shall be in the amount of one hundred dollars (\$100)
25 per violation for a maximum of 30 days, and shall be grounds for
26 disciplining the foster family home licensee or the foster family
27 agency pursuant to Section 1550. The State Department of Social
28 Services may assess penalties for continued violations, as permitted
29 by Section 1548. The fingerprint images shall then be submitted
30 to the Department of Justice for processing.

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

1 with providing the information to the State Department of Social
2 Services.

3 (7) If the State Department of Social Services or other approving
4 authority finds that the applicant, or any other person specified in
5 subdivision (b) who is not exempt from fingerprinting, has been
6 convicted of a crime other than an infraction, the application or
7 presence shall be denied, unless the department grants an
8 exemption from disqualification pursuant to subdivision (g).

9 (8) If the State Department of Social Services or other approving
10 authority finds, after licensure or the granting of the certificate of
11 approval, that the licensee, certified foster parent, resource family,
12 or any other person specified in subdivision (b) who is not exempt
13 from fingerprinting, has been convicted of a crime other than an
14 infraction, the license or certificate of approval may be revoked
15 or rescinded by the department or the foster family agency,
16 whichever is applicable, unless the department grants an exemption
17 from disqualification pursuant to subdivision (g). A licensee's
18 failure to comply with the department's prohibition of employment,
19 contact with clients, or presence in the facility as required by
20 paragraph (3) of subdivision (c) shall be grounds for disciplining
21 the licensee pursuant to Section 1550.

22 (e) (1) The State Department of Social Services shall not use
23 a record of arrest to deny, revoke, rescind, or terminate ~~any~~ *an*
24 application, license, certificate of approval, employment, or
25 residence unless the department investigates the incident and
26 secures evidence, whether or not related to the incident of arrest,
27 that is admissible in an administrative hearing to establish conduct
28 by the person that may pose a risk to the health and safety of ~~any~~
29 *a* person who is or may become a client.

30 (2) The department shall not issue a criminal record clearance
31 to a person who has been arrested for ~~any~~ *a* crime specified in
32 Section 290 of the Penal Code, or for violating Section 245, 273ab,
33 or 273.5, or subdivision (b) of Section 273a, of the Penal Code,
34 or, prior to January 1, 1994, paragraph (2) of Section 273a of the
35 Penal Code, or for ~~any~~ *a* crime for which the department is
36 prohibited from granting a criminal record exemption pursuant to
37 subdivision (g), prior to the completion of an investigation pursuant
38 to paragraph (1).

39 (3) The State Department of Social Services is authorized to
40 obtain ~~any~~ arrest or conviction records or reports from any law

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

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

24 (2) For purposes of this chapter, the department shall consider
25 criminal convictions from another state or federal court as if the
26 criminal offense was committed in this state.

27 (g) (1) Except as otherwise provided in this subdivision with
28 respect to a foster care provider applicant, including a relative
29 caregiver, nonrelative extended family member, or resource family,
30 after review of the record, the department may grant an exemption
31 from disqualification for a license or special permit as specified
32 in paragraph (4) of subdivision (a), or for a license, special permit,
33 or certificate of approval as specified in paragraphs (4), (7), and
34 (8) of subdivision (d), or for employment, residence, or presence
35 in a community care facility as specified in paragraphs (3), (4),
36 and (5) of subdivision (c), if the department has substantial and
37 convincing evidence to support a reasonable belief that the
38 applicant or the person convicted of the crime, if other than the
39 applicant, is rehabilitated and is presently of such good character
40 as to justify issuance of the license or special permit or granting

1 an exemption for purposes of subdivision (c). Except as otherwise
2 provided in this subdivision, an exemption shall not be granted
3 pursuant to this subdivision if the conviction was for any of the
4 following offenses:

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

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

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

26 (C) (i) Notwithstanding clause (ii) of subparagraph (A), an
27 exemption shall not be granted pursuant to this subdivision to any
28 applicant for licensure of a community care facility eligible to
29 accept placement of a dependent child if either that applicant or
30 any other person specified in subdivision (b) who is associated
31 with the facility has a felony conviction for either of the following
32 offenses:

33 (I) A felony conviction for child abuse or neglect, spousal abuse,
34 crimes against a child, including child pornography, or for a crime
35 involving violence, including rape, sexual assault, or homicide,
36 but not including other physical assault and battery. For purposes
37 of this subclause, a crime involving violence means a violent crime
38 specified in clause (i) of subparagraph (A) or subparagraph (B).

39 (II) A felony conviction for physical assault, battery, or a drug-
40 or alcohol-related offense that occurred within the last five years.

1 (ii) This subparagraph shall be operative to the extent that
2 compliance with these provisions is required by federal law as a
3 condition for receiving funding under Title IV-E of the federal
4 Social Security Act (42 U.S.C. Sec. 670 et seq.).

5 (2) (A) For a foster care provider applicant, a resource family
6 applicant, a tribally approved home applicant, or a prospective
7 respite care provider, as described in Section 16501.01 of the
8 Welfare and Institutions Code, except as specified in clause (iv),
9 an exemption shall not be granted if that applicant, or any
10 individual subject to the background check requirements of this
11 section pursuant to foster care provider applicant, resource family
12 approval, tribally approved home, or respite care provider
13 standards, has a conviction within the past 10 years for any of the
14 following offenses:

15 (i) 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 273ab, 273d, 288, or 289,
18 subdivision (c) of Section 290, or Section 368, of the Penal Code,
19 or was a conviction of another crime against an individual specified
20 in subdivision (c) of Section 667.5 of the Penal Code.

21 (ii) 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) of
24 Section 451 of the Penal Code.

25 (iii) Except as specified in clause (iv), an exemption shall not
26 be granted pursuant to this subdivision to any foster care provider
27 applicant, including a tribally approved home applicant, if that
28 applicant, or any other person specified in subdivision (b) in those
29 homes, has a felony conviction for either of the following offenses:

30 (I) A felony conviction for child abuse or neglect, spousal abuse,
31 crimes against a child, including child pornography, or for a crime
32 involving violence, including rape, sexual assault, or homicide,
33 but not including other physical assault and battery. For purposes
34 of this subparagraph, a crime involving violence means a violent
35 crime specified in clause (i) of subparagraph (A), or clause (ii) of
36 this subparagraph.

37 (II) A felony conviction, within the last five years, for physical
38 assault, battery, or a drug- or alcohol-related offense.

39 (III) This clause ~~shall~~ does not apply to licenses or approvals
40 ~~wherein~~ when a caregiver was granted an exemption to a criminal

1 conviction described in clause (i) prior to the enactment of this
2 clause.

3 (IV) This clause shall remain operative only to the extent that
4 compliance with its provisions is required by federal law as a
5 condition for receiving funding under Title IV-E of the federal
6 Social Security Act (42 U.S.C. Sec. 670 et seq.).

7 (iv) For the sole purpose of approving a home pursuant to
8 subparagraph (B) of paragraph (4) of subdivision (c) of Section
9 16519.5 of the Welfare and Institutions Code, the department or
10 other approving entity may grant an exemption for a relative or
11 any other adult living in the home, who has been convicted of an
12 offense described in this subparagraph if the applicant is seeking
13 placement of a specific child or children with whom the applicant
14 is related, the applicant or other adult living in the home is of
15 present good character necessary to justify granting the exemption
16 pursuant to the factors described in subparagraph (C), and the
17 applicant or other adult living in the home does not have a felony
18 conviction within the last five years for child abuse or neglect,
19 spousal abuse, rape, sexual assault, homicide, or any other crime
20 against a child, including child pornography. An exemption granted
21 pursuant to this clause shall only be valid for purposes of the
22 relative's child-specific resource family approval and shall not be
23 transferrable to any other setting pursuant to subdivision (h).

24 (B) The department or other approving entity may grant an
25 exemption from disqualification to a foster care provider, resource
26 family applicant, tribally approved home applicant, or any
27 individual subject to the background check requirements of this
28 section pursuant to foster care provider applicant, resource family
29 approval, tribally approved home, or respite care provider
30 standards, if the department or other approving entity has
31 substantial and convincing evidence to support a reasonable belief
32 that the applicant or the person convicted of the crime, if other
33 than the applicant, is of present good character necessary to justify
34 the granting of an exemption and the conviction is for one of the
35 following offenses:

36 (i) (I) Any misdemeanor conviction within the last three years
37 that is not otherwise prohibited by subparagraph (A).

38 (II) Notwithstanding subparagraph (A), a misdemeanor
39 conviction for statutory rape, as defined in Section 261.5 of the
40 Penal Code, a misdemeanor conviction for indecent exposure, as

1 defined in Section 314 of the Penal Code, or a misdemeanor
2 conviction for financial abuse against an elder, as defined in
3 Section 368 of the Penal Code, shall be eligible for the
4 consideration of an exemption as set forth in subparagraph (C).

5 (ii) Any felony conviction within the last five years that is not
6 otherwise prohibited by subparagraph (A).

7 (C) When granting an exemption for a crime listed in
8 subparagraph (B), the department or other approving entity shall
9 consider all reasonably available information, including, but not
10 limited to, the following:

11 (i) The nature of the crime or crimes.

12 (ii) The period of time since the crime was committed.

13 (iii) Any longstanding pattern of criminal conduct.

14 (iv) Circumstances surrounding the commission of the crime
15 indicating the likelihood of future criminal activity.

16 (v) Activities since conviction, including employment,
17 participation in therapy, education, or treatment.

18 (vi) Whether the person convicted has successfully completed
19 probation or parole, obtained a certificate of rehabilitation, or been
20 granted a pardon by the Governor.

21 (vii) Any character references or other evidence submitted by
22 the applicant.

23 (viii) Whether the person convicted demonstrated honesty and
24 truthfulness concerning the crime or crimes during the application
25 and approval process.

26 (D) (i) The department or other approving entity shall grant an
27 exemption from disqualification to a foster care provider applicant,
28 resource family applicant, tribally approved home applicant, or
29 any person subject to the background check requirements of this
30 section pursuant to foster care provider applicant, resource family
31 approval, tribally approved home, or respite care provider
32 standards, who has been convicted of an offense not listed in
33 subparagraph (A) or (B), if the individual's state and federal
34 criminal history information received from the Department of
35 Justice independently supports a reasonable belief that the applicant
36 or the person convicted of the crime, if other than the applicant,
37 is of present good character necessary to justify the granting of an
38 exemption.

39 (ii) Notwithstanding the fact that an individual meets the criteria
40 described in clause (i), the department or other approving entity,

1 at its discretion, as necessary to protect the health and safety of a
2 child, may evaluate a person described in clause (i), for purposes
3 of making an exemption decision, pursuant to the criteria described
4 in subparagraphs (B) and (C).

5 (E) This paragraph ~~shall~~ *does* not apply to licenses or approvals
6 for which a caregiver was granted an exemption for a criminal
7 conviction prior to January 1, 2018.

8 (3) The department shall not prohibit a person from being
9 employed or having contact with clients in a facility, certified
10 family home, or resource family home on the basis of a denied
11 criminal record exemption request or arrest information unless the
12 department complies with the requirements of Section 1558 of this
13 code or Section 16519.6 of the Welfare and Institutions Code, as
14 applicable.

15 (h) (1) For 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 State Department of
22 Social Services, and shall include a copy of the person's driver's
23 license or valid identification card issued by the Department of
24 Motor Vehicles, or a valid photo identification issued by another
25 state or the United States government if the person is not a
26 California resident. Upon request of the licensee, who shall enclose
27 a self-addressed envelope for this purpose, the State Department
28 of Social Services shall verify whether the individual has a
29 clearance that can be transferred.

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

34 (3) A criminal record clearance or exemption processed by the
35 department, a county office with clearance and exemption authority
36 pursuant to Section 16519.5 of the Welfare and Institutions Code,
37 or a county office with department-delegated licensing authority
38 shall be accepted by the department or county upon notification
39 of transfer.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code and Section 1522.1 concerning an individual whose criminal record clearance was originally processed by the department, a county office with clearance and exemption authority pursuant to Section 16519.5 of the Welfare and Institutions Code, or a county office with department-delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county to receive the notice only if all of the following conditions are met:

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

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

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

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

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

(C) The Department of Justice shall charge the department, a county office with department-delegated licensing authority, or a county child welfare agency with criminal record clearance and exemption authority, a fee for each time a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

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

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil

1 liability or unemployment insurance liability as a result of that
2 denial or termination.

3 (k) The State Department of Social Services may charge a
4 reasonable fee for the costs of processing electronic fingerprint
5 images and related information.

6 SEC. 2. Section 1522.6 is added to the Health and Safety Code,
7 to read:

8 1522.6. (a) The State Department of Social Services shall post
9 on its internet website and make publicly available, upon request,
10 all of the following information for each year:

11 (1) The total number of applications for criminal background
12 clearance.

13 (2) The number of applicants who were denied, the number of
14 applicants granted clearance without a criminal record exemption,
15 the number of applicants granted a clearance with a criminal
16 record exemption, and the number of applicants granted a
17 clearance with restrictions.

18 (A) For applicants processed under the criminal record
19 exemption process, the total number who meet the criteria or a
20 simplified exemption under subdivision (c) of Section 1522.7 and
21 total number who meet the criteria under subdivision (d) of Section
22 1522.7.

23 (B) (i) For applicants who are screened for a simplified
24 criminal record exception under subdivision (c) of Section 1522.7,
25 the number who meet criteria under paragraph (2) of subdivision
26 (c) of Section 1522.7, but were found to not meet the criteria under
27 paragraph (1) of subdivision (c) of Section 1522.7.

28 (ii) For applicants who are screened for a simplified criminal
29 record exception under subdivision (c) of Section 1522.7, the
30 number who meet criteria under paragraph (2) of subdivision (c)
31 of Section 1522.7, but were found to not meet the criteria under
32 paragraph (3) of subdivision (c) of Section 1522.7.

33 (C) For applicants processed under the criminal record
34 exemption process, the total number who meet the criteria under
35 subdivision (d) of Section 1522.7, but were not processed under
36 that subdivision due to the discretion of the State Department of
37 Social Services.

38 (3) The reason or reasons stated for denying a criminal record
39 exemption, or the reason or reasons stated for granting a criminal
40 record exemption with restrictions, including whether the reason

1 *is a result of the type of crime, the rehabilitation evaluation, or*
2 *the client or facility type.*

3 *(4) The number of applicants who have a pending status for*
4 *more than 30 days due to incomplete application information, a*
5 *fingerprint rejection, a missing response from the Department of*
6 *Justice or the Federal Bureau of Investigations, or other categories*
7 *suggested by the State Department of Social Services.*

8 *(5) The number of applicants denied clearance due to a*
9 *conviction of a nonexemptible crime, a conviction processed*
10 *through the standard exemption process, a conviction processed*
11 *through the standard exemption process and an appeal, an*
12 *administrative action, a substantiated child abuse report, an arrest,*
13 *or any other reason provided by the State Department of Social*
14 *Services.*

15 *(6) The State Department of Social Services shall provide the*
16 *reason for the pending status of any responsive data that does not*
17 *fall under paragraph (5).*

18 *(7) The restrictions imposed on applicants who were granted*
19 *criminal record exemptions and the duration of those restrictions,*
20 *including whether the reason or duration is a result of the type of*
21 *crime, the rehabilitation evaluation, or the client or facility type.*

22 *(8) Race, ethnicity, gender, and age demographic data for all*
23 *applicants, sorted by applicants who were denied, given a*
24 *clearance, granted a criminal record exemption, or granted a*
25 *criminal record exemption with restrictions.*

26 *(9) The county of residence of the applicants who were denied,*
27 *given a clearance, granted a criminal record exemption, or granted*
28 *a criminal record exemption with restrictions.*

29 *(b) Data shall be published in aggregate and without any*
30 *personally identifying information.*

31 *(c) The department shall collect the following information about*
32 *individuals subject to the criminal background check process*
33 *pursuant to Section 1522, Section 1568.09, Section 1569.17, or*
34 *Section 1596.871:*

35 *(1) The number of criminal record exemption requests received*
36 *by the department.*

37 *(2) The number of criminal record exemptions approved and*
38 *denied.*

39 *(3) The crimes for which exemptions were approved or denied.*

1 (4) *The demographic data of individuals who received or did*
2 *not receive exemptions, which shall include, but not be limited to,*
3 *the age, gender, and ethnicity of the applicant.*

4 (5) *The number of individuals who appealed an exemption*
5 *decision.*

6 (6) *The outcomes of appealed exemption decisions.*

7 (7) *The average length of time that elapsed prior to a decision*
8 *being issued on an appeal.*

9 (8) *The average length of time that elapsed prior to a decision*
10 *being issued on an initial exemption.*

11 (d) (1) *The department shall examine and review the*
12 *demographic data collected pursuant to subdivision (c) to*
13 *determine whether demographic disparities exist within the existing*
14 *criminal background check process.*

15 (2) *The department shall issue, no later than January 1, 2024,*
16 *a report with its findings in accordance with Section 9795 of the*
17 *Government Code.*

18 SEC. 3. *Section 1522.7 is added to the Health and Safety Code,*
19 *to read:*

20 1522.7. (a) *This section shall not apply to individuals who are*
21 *subject to subdivision (d) of Section 1522.*

22 (b) *The State Department of Social Services shall process a*
23 *simplified criminal record exemption to a person subject to the*
24 *criminal record clearance provisions of Section 1522, Section*
25 *1568.09, Section 1569.17, or Section 1596.871, who meets the*
26 *requirements of this section.*

27 (c) *The department shall grant a simplified criminal record*
28 *exemption if an individual meets all of the following criteria:*

29 (1) *The individual does not have a demonstrated pattern of*
30 *criminal activity. The State Department of Social Services shall*
31 *define “pattern of criminal activity” for these purposes.*

32 (2) *The individual has no more than one conviction.*

33 (3) *The conviction is a nonviolent misdemeanor and does not*
34 *pose a risk of physical harm to an individual. For purposes of this*
35 *section, “risk of physical harm” means harm that is probable, not*
36 *just possible.*

37 (4) *At least five consecutive years have passed since the date*
38 *of the conviction.*

1 (d) *The department shall consider granting a simplified criminal*
2 *record exemption if an individual meets all of the following*
3 *criteria:*

4 (1) *The individual has five or fewer nonviolent misdemeanor*
5 *convictions.*

6 (2) *The individual has not been convicted of a crime within the*
7 *last five years.*

8 (3) *The individual has not been convicted of a felony.*

9 (4) *The individual has not been convicted of a crime described*
10 *in subparagraph (A) of paragraph (2) of subdivision (g) of Section*
11 *1522 or subparagraph (B) of paragraph (2) of subdivision (g) of*
12 *Section 1522.*

13 (5) *The department may require, in its discretion, an individual*
14 *who is otherwise eligible for a simplified exemption pursuant to*
15 *this subdivision to complete the standard exemption process if the*
16 *department determines completing the standard exemption process*
17 *will protect the health and safety of children and adults placed in*
18 *community care facilities.*

19 (e) *A simplified criminal record exemption granted pursuant to*
20 *this section does not relieve the person from compliance with other*
21 *applicable screening provisions.*