
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1914 **Hearing Date:** June 26, 2018
Author: Flora
Version: June 14, 2018
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Presence at Health Care Facilities: Conviction of Crimes*

HISTORY

Source: California State Auditor's Office

Prior Legislation: None

Support: The Arc; Association of Regional Center Agencies; California Commission on Aging; California District Attorneys Association; California Long-Term Care Ombudsman Association; California Police Chiefs Association; United Cerebral Palsy California Collaboration

Opposition: American Civil Liberties Union

Assembly Floor Vote: 71 - 0

PURPOSE

The purpose of this bill is to add a number of offenses to the list of crimes for which a person may not get an exemption to work at a community care facility.

Existing law establishes the Community Care Facilities Act, which provides for licensure and regulation of community care facilities. The Act defines community care facility to mean any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children and includes residential facilities, adult day programs, foster family agencies, group homes, and children's crisis residential programs, among others. (Health and Safety Code §1500 et seq.)

Existing law establishes a regulatory structure for licensed Residential Care Facilities for Persons With Chronic Life-Threatening Illness serving people who are 18 years of age or older or are emancipated minors and requires license holders to provide basic services for each resident, as specified. (Health and Safety Code §1568 et seq.)

Existing law establishes the California Residential Care Facility for the Elderly (RCFE) Act, which requires facilities that provide personal care and supervision, protective supervision, or health related services for persons 60 years of age or older who voluntarily choose to reside in those facilities to be licensed. (Health and Safety Code §1569 et seq.)

Existing law establishes the California Child Day Care Facilities Act to provide a comprehensive, quality system for licensing child day care facilities to ensure that working families have access to healthy and safe child care providers and that child care programs contribute positively to a child's emotional, cognitive, and educational development, and are able to respond to, and provide for, the unique characteristics and needs of children. (Health and Safety Code § 1596.70 et seq.)

Existing law requires an applicant and other specified persons to submit fingerprint images to the Department of Justice (DOJ) and the Federal Bureau of Investigation for a criminal offender record information search prior to employment, residence, or initial presence in certain facilities, including: RCFEs, residential care facilities for the chronically ill, child day care facilities, and community care facilities. It also requires the results of the criminal record search to be submitted to CDSS. It further requires CDSS to deny an application or specified person from being present at a facility if that person has been convicted of a crime, other than a minor traffic violation, unless the CDSS grants an exemption, as specified. Permits CDSS to issue an exemption if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. Existing law prohibits a criminal records exemption from being granted for persons with a conviction for specified offenses. (Health and Safety Code §§ 1522 (g)(1)(A); 1569.17 (f); 1568.09 (f);1596.871)

Existing law defines rape as an act of sexual intercourse accomplished with a person not the spouse of the perpetrator under certain circumstances, including, but not limited to, when it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another. (Penal Code § 261)

Existing law provides that rape of a person who is the spouse of the perpetrator is an act of sexual intercourse that is accomplished under certain specified circumstances including:

- 1) Where a person is prevented from resisting by an intoxicating or anesthetic substance. (Penal Code § 262(a)(2))
- 2) Where a person is at the time unconscious of the act, and this is known to the accused. (Penal Code § 262(a)(3))
- 3) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest or deport the victim or another. (Penal Code § 262 (a)(5))

Existing law provides that any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person, is guilty of pimping, a felony, and shall be punished as specified. (Penal Code § 266h(a))

Existing law declares that a person who procures another person for the purpose of prostitution; promises or threatens violence, or causes another person to become a prostitute, among other specified actions, is guilty of pandering, which is a felony and punishable by imprisonment as specified. (Penal Code § 266i(a))

Existing law declares that every person who willfully obtains personal identifying information of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person, is guilty of a public offense, and upon conviction, shall be punished, as specified. (Penal Code § 530.5)

This bill adds the following offenses to the list offenses for which a person may not be granted an exemption from working or being present in a community care facility, a residential care facility for persons with a chronic, life-threatening illness, a residential care facility for the elderly, or a child day care facility:

- 1) Spousal rape when the person is intoxicated, unconscious of the act or the act is committed under threat of deportation or deportation of another.
- 2) Pimping.
- 3) Pandering.
- 4) Multiple violations of identity theft or a single violation that occurred within the last 10 years.

COMMENTS

1. Need for This Bill

According to the author:

The Caregiver Background Check Bureau (CBCB) categorizes 60 crimes as non-exempt crimes for individuals applying for a background check to work in Community Care Facilities. The California State Auditor released a 2017 audit of DSS, specifically relating to background checks performed by the CBCB. The report identified eight crimes that were exempt despite substantial similarities to existing convictions on the list of prohibited crimes. AB1914 would add six crimes including three categorizations of rape, pimping, pandering, and identity theft to the list of 60 non-exemptible crimes. This bill will prevent certain dangerous individuals from passing through DSS's CBCB and working in licensed care facilities.

2. Community Care Licensing

The Community Care Licensing Division (CCLD) within CDSS is responsible for regulating the facilities it licenses and protecting the health and safety of children, adults, and seniors who are cared for within those facilities. CCLD licenses and oversees more than 70,000 community care facilities—including child care facilities, foster family homes, and care facilities for the elderly—throughout California. These facilities typically provide non-medical care and supervision for children and adults in need, which includes persons with disabilities, seniors in need of residential care, children in foster care and at-risk children needing shelter services, families in need of child

and adult care services. In addition to licensing community care facilities, CDSS is also responsible for investigating all complaints against those facilities.

State law requires all applicants, licensees, adult residents, volunteers under certain conditions, and employees of CCLD-licensed facilities who have contact with clients to be subject to a background check. These background checks are used to determine whether individuals should be allowed to be present in a licensed facility.

Background checks result in a criminal record clearance, denial or exemption. If an individual has no history of arrests and convictions, a clearance notice is sent to CDSS's Caregiver Background Check Bureau (CBCB). If an individual has a criminal history, a record of arrests and prosecutions sent to CBCB.

State law prohibits anyone with a criminal conviction for any crime—other than a minor traffic violation—from caring for or living with clients in a licensed facility. However, state law gives CDSS the authority to grant an individual an exemption to this prohibition if it determines that the individual is of good character and therefore not a health and safety risk to vulnerable populations. CDSS cannot exempt individuals who have been convicted of specified crimes. The crimes for which an exemption cannot be granted are: assault with intent to commit a sex offense; sexual battery; rape in concert; child abuse; lewd act on a child; rape with a foreign object; any violent felony; specified felonies committed by a doctor, psychotherapist, counselor; torture; carjacking; poisoning a food or drug; brandishing a firearm; and, arson with injury.

In cases where there is a criminal history, CBCB reviews the criminal history information and other information in order to determine whether that individual should be permitted to be present in a licensed facility. The CBCB's procedures state that an exemption may be granted if the individual has presented substantial and convincing evidence that he or she is of good character and is not a threat to the well-being of clients. However, if the CBCB determines that the individual has not presented sufficient evidence that demonstrates he or she poses no threat to clients' safety, the CBCB can deny an exemption or impose conditions on that individual's presence or role at the licensed facility.

3. Addition of Non-Exemptible Crimes

This bill would add: spousal rape when the person is intoxicated, unconscious of the act or the act is committed under threat of deportation or deportation of another; pimping; pandering; and, multiple violations of identity theft or a single violation that occurred within the last 10 years to the offense for which an exemption may not be granted by CBCB for a person to work in a community care facility, residential care facility, or daycare.

Should additional crimes be added to what is a lifetime ban from working in one of the facilities in any capacity? Is there no chance a person who has been convicted of one of these offenses, or any of these existing offenses, be rehabilitated?

4. Argument in Support

According to the California Long-Term Care Ombudsman Association:

As a membership organization comprised of Local Long-Term Care Ombudsman Programs, their staff, volunteers and supporters, CLTCOA leadership all too often hear concerns from families wanting the assurance that the staff of the residential care facilities, they have entrusted to provide care for their loved ones are people of high moral character.

Care givers in assisted living facilities are often unsupervised while providing care to the older or dependent adults living in the facility. No matter the projected workforce shortage, the state of California must not grant exemptions for care giver applicants who have criminal convictions that prove they cannot be trusted to not take advantage of individuals.

5. Argument in Opposition

The ACLU opposes stating:

AB 1914 seeks to expand the list of non-exemptible crimes, needlessly denying people the opportunity to work, volunteer or live in community care facilities. The process for receiving and exemption with a conviction is rigorous and thorough: Not only is the CBCB informed of the individual's entire criminal history, including arrests, but the individual must also submit a signed statement describing the events surrounding each conviction, copies of all law enforcement reports related to the individual's convictions, documentation of successfully completed probation, verification of training, classes courses treatment, or counseling, three signed character references, and a written request for an exemption. The CBCB is directed to consider the pattern of criminal behavior, vulnerability of the victim, and the honesty of the individual's description of the crimes. After carefully evaluating all of the information, the CBCB makes the determination of whether the person is of good character and is not a threat to clients, it is only then that the individual may be granted and exemption.

The Equal Employment Opportunity Commission advises employers to make individualized assessments instead of using blanket exclusions when it comes to conviction and arrest histories. They recommend employers consider time passed since the offense and its relevance to the job-both of which CBCB evaluate in their assessments of people with convictions.

AB 1914 goes directly against these recommendations by erecting an unnecessary barrier to working, volunteering or living in community care facilities. This bill will result in significant harms for those who would otherwise have been able to demonstrate that they pose no threat as well as to their families and communities.

-- END --