

INITIAL STATEMENT OF REASONS

The Legislature's intent in passing Assembly Bill 388 (Chapter 760, Statutes of 2014) was to reduce the incidence of foster youth being inappropriately referred to, and detained in, the juvenile justice system for minor incidents and behavior issues solely due to their status as a foster youth and thus give foster youth the same experience as their peers who are not foster youth. The law requires group homes, runaway and homeless youth shelters, community treatment facilities and transitional housing placement providers report to the California Department of Social Services (CDSS) all incidents concerning a child in the facility that involve contact with law enforcement, and provide a follow-up report for each incident within six months. It further requires CDSS to conduct an inspection (supplemental to any other mandated inspection) of facilities that report a higher than average number of law enforcement contacts due to specific crimes alleged to have been committed by residents. The CDSS is also mandated to consult with specified stakeholders in order to develop performance standards and outcome measures related to minimizing law enforcement contacts and delinquency petition filings arising from incidents of allegedly criminal behavior by minors who reside in group homes. The CDSS must promulgate regulations that adopt new requirements necessitated by the mandates of the statute or developed in consultation with stakeholders, as well as to clarify places where the statute's requirements are ambiguous.

The CDSS has endeavored to ensure that these regulatory amendments comply with the non-duplication standard found in Title 1, California Code of Regulations. In some instances, however, the amended regulations duplicate California statute in part where clarification of the law was necessitated and where access to regulatory requirements in their full context is necessary for clarity. Such duplications will be addressed in turn in Section a).

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 80044(a)

Specific Purpose:

This regulation is amended to add Section 1538.7 to the list of Health and Safety Code sections which grant the licensing agency (the California Department of Social Services) the authority to inspect various community care facilities regulated by Division 6, Chapter 1 of Title 22, California Code of Regulations. The reference note is amended to include Health and Safety Code section 1538.7.

Factual Basis:

This amendment is necessary to ensure that regulations are consistent with Health and Safety Code section 1538.7, which was added by the adoption of Assembly Bill 388. The statute authorizes a new annual inspection of any group home, transitional housing placement provider, community treatment facility, runaway and homeless youth shelter or short-term residential treatment center found by the Department to have reported a greater than average number of law enforcement contacts involving an alleged violation of a crime as described in Welfare and Institutions Code section 602 by a child residing in the facility.

Section 84001(b)(1) and Handbook Section 84001(b)(1)

Specific Purpose/Factual Basis:

The definition for "Behavioral Management Consultant" is amended to change "Sections 54344(d)," which no longer exists in Title 17 of the California Code of Regulations, to "Sections 54342(a)(13)(A)1-7," where the requirements for behavioral management consultants are currently located, in the interest of clarity and consistency. Some minor grammatical changes are also made for clarity. The section of handbook detailing the requirements for behavioral management consultants in Title 17 are revised accordingly.

Section 84001(l)(1)

Specific Purpose:

A definition for "law enforcement" is added for clarity.

Factual Basis:

This amendment is necessary to clarify the meaning of the term "law enforcement" as used in Sections 84061(i), 84063(a), 84065(i) and (n), 84072.1(c), 84300.1(e) and (f), 84322.2(c), 84361(h), 84365(b) and 84165(f). The definition specifies that for the purpose of these regulations "law enforcement" means any officer, sheriff, or marshal of a city, state, or federal law enforcement agency.

Sections 84061(b) and (f)

Specific Purpose:

These regulations are amended to change the phrase "working day" to "business day" for clarity and consistency.

Factual Basis:

Section 84061(i) was added in part to clarify what is meant by Health and Safety Code section 1538.7 when it requires specified incidents to be reported "upon the occurrence." The CDSS has interpreted "upon the occurrence," following standard CDSS practice, to mean no later than the next business day. This necessitates the changing of "working day" in Sections 84061(b) and (f) to the more descriptive "business day" for clarity, and for consistency with Section 84061(i).

Sections 84061(i) through Handbook Section 84061(i)(5)

Specific Purpose:

This regulation adds and clarifies new requirements for the reporting of incidents concerning children residing in group homes involving contact with law enforcement as mandated in Health and Safety Code section 1538.7. The reference note is amended to include Health and Safety Code section 1538.7. Finally, an example is placed in the handbook.

Factual Basis:

This regulation is necessary to incorporate new reporting mandates in Health and Safety Code section 1538.7(a) into existing group home regulations detailing incidents which licensees are required to report, as well as to clarify areas that the statute left open to interpretation for the benefit of both the licensees who must comply with this law and CDSS employees who must enforce it. Although Health and Safety Code section 1538.7(a) is repeated in part in Section 84061(i), the clarifications provided, as well as the need to present the requirements in their full context for the sake of clarity, ensure that the regulations does not needlessly violate the non-duplication standard in Title 1, California Code of Regulations.

While statute requires that initial reports on incidents entailing law enforcement contact with a child residing in the facility be made "upon the occurrence," this regulation interprets this term, following standard CDSS practice, to mean no later than the next business day. The requirement in Health and Safety Code section 1538.7(a) that licensees provide a follow-up report for each incident "at least every six months," is interpreted to require an individual report within six months of the incident's occurrence, rather than an aggregate report at six month intervals as the statutory wording could be read to allow. Further, the regulations specify that the follow-up report could be made at any time within six months of each incident, even immediately, if all outcomes and required information are known.

Health and Safety Code section 1538.7(a) requires that incident reports include several data elements, but tie the collection of these elements to the six month follow-up reports. This regulation interprets the statute as requiring those data elements known to the licensee at the time of making the initial report to be included at that time, and that such information need only be provided in the follow-up report if it has changed. In order to prevent unnecessary duplication, this regulation also clarifies that reports made in order to comply with the provisions of Health and Safety Code section 1538.7(a) satisfy any other existing regulatory reporting requirement so long as all required information is provided.

In requiring that group homes and other specified facilities report incidents concerning a child in the facility involving contact with law enforcement, Health and Safety Code section 1538.7 directs that the follow-up report include "whether the incident involved an alleged violation of any crime described in Section 602 of the Welfare and Institutions Code by a child residing in the facility." Welfare and Institutions Code section 602, however, does not describe any crimes, but rather states that children under 18 years of age who violate any law, other than an age-based curfew law, are within the jurisdiction of the juvenile court, which may adjudicate them as wards of the court, unless they are 14 years of age or older and have committed murder or specified sex offenses, in which case they shall be prosecuted under the general law in a court of criminal (not juvenile) jurisdiction. Thus, the regulations further clarify that providers must include in the follow-up report whether the incident involved an alleged violation of any crime, other than an age-based curfew law, by a child residing in the facility, as referring to Welfare and Institutions Code section 602 does not provide adequate direction.

The regulations and handbook further clarify that routine contact by probation officers supervising the placement of a child need not be reported, though action taken by a probation officer in response to a reportable incident should be reported as an outcome, if known. This distinction is necessary to make clear that incidents to be reported are those that get to the intent of AB 388 of minimizing interactions with the justice system that lead to delinquency petitions. Reporting regular interaction between probation officers and adjudicated dependents would lead to voluminous paperwork which, in addition to burdening licensees, would hinder CDSS' efforts to meet the objective of Health and Safety Code section 1538.7(b) of determining which facilities report a greater than average number of law enforcement contacts.

Section 84063(a)

Specific Purpose/Factual Basis:

A punctuation correction (changing ":" to ",") is made for clarity.

Section 84063(a)(8)(A)

Specific Purpose:

Existing regulations require group home boards of directors to conduct meetings, at least quarterly, to review and discuss the facility's operation and documents as specified in Health and Safety Code section 1520.1(f) in order to ensure that their facility is in compliance with all applicable regulations. This regulation adds to this process a review and discussion of all incidents that were reported to CDSS as specified in Section 84061(i).

Factual Basis:

This regulation is necessary to implement a change proposed by the workgroup convened by CDSS in keeping with Welfare and Institutions Code section 11469(f), which required consultation with specified stakeholders to develop performance standards and outcome measures that require group homes to implement programs and services to minimize law enforcement contacts and delinquency petition filings arising from incidents of allegedly unlawful behavior by minors occurring in group homes or under the supervision of group home staff. It will ensure that group home boards of directors are aware of the incidents involving children in their facilities in which law enforcement was contacted, enabling them to assess whether the facility's policies and procedures were followed, and whether those policies and procedures could be improved both to limit the incidence of children in their facilities coming into contact with law enforcement or to enhance the safety of children and staff. To the extent that these discussions are captured in the meeting minutes, required by current regulation to be taken and kept as part of the facility's permanent record, they will inform CDSS' inspection of those facilities that are identified as having a greater than average number of law enforcement contacts involving an alleged violation of a crime. This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

Handbook Section 84063(a)(8)(A) is Renumbered from Section 84063(a)(8)(A)

Specific Purpose/Factual Basis:

Section 84063(a)(8)(A) is renumbered to Handbook Section 84063(a)(8)(A) to remove the handbook from the outline, which eliminates a possible gap in regulation outline within the Westlaw published California Code of Regulations.

Section 84065(i)

Specific Purpose/Factual Basis:

A grammatical change (Section to Sections) is made for clarity.

Sections 84065(i)(3)(T) and (j)(3)(O)

Specific Purpose:

These regulations add the group home's policies and procedures concerning when and how to involve law enforcement in response to an incident involving a child residing at the facility to the list of mandatory topics for the initial training of all new child care staff, as well as the list of possible topics that may be included in each child care staff member's required annual training.

Factual Basis:

These regulations are necessary to implement a change proposed by the workgroup convened by CDSS in keeping with Welfare and Institutions Code section 11469(f), which required consultation with specified stakeholders to develop performance standards and outcome measures that require group homes to implement programs and services to minimize law enforcement contacts and delinquency petition filings arising from incidents of allegedly unlawful behavior by minors occurring in group homes or under the supervision of group home staff. By ensuring that all group home staff is aware of and expected to follow, the facility's policies and procedures on when and how to contact law enforcement, unnecessary calls to law enforcement should be minimized, which will meet the legislature's intent, as stated in Section 1 of AB 388, that the frequency of law enforcement involvement and delinquency petitions arising from incidents at group homes and other facilities be reduced. This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

Section 84065(n)

Specific Purpose:

Existing regulations require group homes to make available to all personnel an employee training handbook. This regulation is amended to include the facility's procedures for contacting law enforcement as one of the subjects required to be included in the handbook.

Factual Basis:

Amending this regulation will ensure that group home employees have access to a reference on their facility's procedures for contacting law enforcement at any time, including times that they may be unsure of whether law enforcement should be called during or after an incident. This should minimize unnecessary calls to law enforcement and help meet the legislature's intent, as stated in Section 1 of AB 388, that the frequency of law enforcement involvement and delinquency petitions arising from incidents at group homes and other facilities be reduced. This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

Sections 84072.1(c) and (d), which (d) is renumbered from (c)

Specific Purpose:

A regulation is added as Section 84072.1(c) to prohibit calling or threatening to call law enforcement as a form of discipline permitted in a group home and remind licensees that any call to law enforcement must be made in accordance with the facility's emergency intervention plan specified in Section 84322. Section 84072.1(c) is renumbered to Section 84072.1(d) to accommodate the addition of Section 84072.1(c).

Factual Basis:

This regulation is necessary to implement a change proposed by the workgroup convened by CDSS in keeping with Welfare and Institutions Code section 11469(f), which required consultation with specified stakeholders to develop performance standards and outcome measures that require group homes to implement programs and services to minimize law enforcement contacts and delinquency petition filings arising from incidents of allegedly unlawful behavior by minors occurring in group homes or under the supervision of group home staff. By explicitly prohibiting law enforcement involvement as a method of punishment, unnecessary calls to law enforcement should be minimized, meeting both the legislature's intent, as stated in Section 1 of AB 388, and the mandate in Welfare and Institutions Code section 11469(f) stated above. Explicitly prohibiting licensees from threatening to call law enforcement as a method of discipline is also consistent with the personal right of children in group homes to be accorded dignity in his or her personal relationships with staff and other persons [Section 84072(c)(13)]. This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

Section 84300.1(e)

Specific Purpose:

Existing regulations specify emergency interventions that are prohibited in group homes. This regulation adds to these prohibitions the reliance on law enforcement agencies as a substitute for effective care and supervision and the facility's approved continuum of emergency interventions.

Factual Basis:

This regulation is necessary to implement a change proposed by the workgroup convened by CDSS in keeping with Welfare and Institutions Code section 11469(f), which required consultation with foster youth advocates, providers and other specified stakeholders to develop performance standards and outcome measures that require group homes to implement programs and services to minimize law enforcement contacts and delinquency petition filings arising from incidents of allegedly unlawful behavior by minors occurring in group homes or under the supervision of group home staff. By promoting a system in which minor misconduct is expected to be managed internally, unnecessary calls to law enforcement should be minimized, meeting both the legislature's intent, as stated in Section 1 of AB 388, and the mandate in Welfare and Institutions Code section 11469(f) stated above. The CDSS will also be able to cite this regulation should it find, upon inspecting those facilities identified as having a greater than average number of law enforcement contacts involving an alleged violation of a crime as required by Health and Safety Code section 1538.7, that a group home is accepting clients whom it cannot properly serve, circumventing its approved continuum of emergency interventions, or otherwise providing inadequate care and supervision. This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

Sections 84322(e)(1)(B) and (f)(5)(A)

Specific Purpose:

Sections 84322(e)(1)(B) and (f)(5)(A), respectively, amend existing regulations on group homes' required emergency intervention plans to include the facility's policies and procedures concerning when and how to involve law enforcement in response to an incident involving a client residing at the facility for group homes that use manual restraints and those that do not.

Factual Basis:

These regulations are necessary to implement a change generated through the workgroup convened by CDSS in keeping with Welfare and Institutions Code section 11469(f), which required consultation with specified stakeholders to develop performance standards and outcome measures that require group homes to implement programs and services to minimize law enforcement contacts and delinquency petition filings arising from incidents of allegedly unlawful behavior by minors occurring in group homes or under the supervision of group home staff. Adding the policies and procedures on contacting law enforcement to the emergency intervention plan ensures that they will be developed with the assistance and approval of a qualified behavior management consultant, as defined in Section 84001(b)(1). This should minimize unnecessary calls to law enforcement, meeting both the legislature's intent, as stated in Section 1 of AB 388 and the mandate in Welfare and Institutions Code section 11469(f) stated above. Further, the Community Care Licensing Division (CCLD) will be able to review these policies and procedures upfront as well as assess their relative effectiveness once the methodology for determining what constitutes a "greater than average number of law enforcement contacts involving an alleged violation of a crime" is developed and facilities above and below the average are identified. This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

Section 84322(f)(5)

Specific Purpose:

The phrase "police/sheriff departments" is replaced with "law enforcement" for consistency.

Factual Basis:

This amendment is necessary for consistency with the use of the term "law enforcement" in Sections 84061, 84063, 84065, 84072.1, 84300.1, 84322.2, 84361, 84365 and 84165 as added and amended in order to implement Assembly Bill 388 (Chapter 760, Statutes of 2014), and as defined in Section 84001(l)(1). As "law enforcement" is now defined in Section 84001(l)(1), use of "police/sheriff departments" here may be confusing. Replacing "police/sheriff departments" with the broader, defined term "law enforcement" will provide clarity to providers and staff.

Sections 84322(e)(1)(C) and (f)(5)(B)

Specific Purpose:

Sections 84322(e)(1)(C) and (f)(5)(B) qualify that the policies and procedures in the preceding subparagraphs shall not be interpreted to require a licensee to take or be prevented from taking, any action that would endanger the health and safety of either children or staff.

Factual Basis:

These regulations are necessary to ensure the health and safety of children and staff in group homes by making clear that the policies and procedures required to be included in a facility's emergency intervention plan pursuant to Sections 84322(e)(1)(B) and (f)(5)(A) do not have the unintended consequence of inhibiting calls to law enforcement in situations where such action is warranted to ensure health and safety. This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

Section 84322.2(c)(5)

Specific Purpose:

Section 84322.2(c)(5) currently requires group home's runaway plan to include the involvement of law enforcement, when appropriate. This regulation is amended to require that this plan be consistent with the policies and procedures for contacting law enforcement specified in the emergency intervention plan in Section 84322(e)(1)(B) if the facility will not use manual restraints or Section 84322(f)(5)(A) if the facility will use or it is reasonably foreseeable that the facility will use, manual restraints. The word "the" is also added to "involvement" for clarity.

Factual Basis:

The amendment to this regulation is necessary to clarify that the existing requirement for a group home's runaway plan to include a plan for law enforcement involvement must be consistent with the new policies and procedures for contacting law enforcement that are now required in the emergency intervention plan through the addition of Sections 84322(e)(1)(B) and (f)(5)(A). This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

Section 84365(b)(7)

Specific Purpose:

This regulation adds a group home's policies and procedures concerning when and how to involve law enforcement in response to an incident involving a child residing at the facility, to the required components of a group home's emergency intervention training curriculum.

Factual Basis:

These regulations are necessary to implement a change proposed by the workgroup convened by CDSS in keeping with Welfare and Institutions Code section 11469(f), which required consultation with specified stakeholders to develop performance standards and outcome measures that require group homes to implement programs and services to minimize law enforcement contacts and delinquency petition filings arising from incidents of allegedly unlawful behavior by minors occurring in group homes or under the supervision of group home staff. Including the policies and procedures on when and how to involve law enforcement in the emergency intervention training curriculum ensures, per Section 84365(a) that such training is received before a staff person is permitted to use emergency intervention techniques on a child, and in conjunction with training on the continuum of emergency interventions. This should minimize unnecessary calls to law enforcement, meeting both the legislature's intent, as stated in Section 1 of AB 388, and the mandate in Welfare and Institutions Code section 11469(f) stated above. This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

Section 84165(f)(2)(G)

Specific Purpose:

This regulation is added to include the community treatment facility's policies and procedures concerning when and how to involve law enforcement in response to an incident involving a child residing at the facility to the areas required to be covered in the licensee's on-the-job training and development program.

Factual Basis:

This regulation ensures that all community treatment facility staff are aware of and expected to follow the facility's policies and procedures on when and how to contact law enforcement. This should minimize unnecessary calls to law enforcement, and help meet the legislature's intent, as stated in Section 1 of AB 388, that the frequency of law enforcement involvement and delinquency petitions arising from incidents at group homes and other facilities be reduced. This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

Section 86001(l)(1)

Specific Purpose:

A definition for "law enforcement" is added for clarity.

Factual Basis:

This amendment is necessary to clarify the meaning of the term "law enforcement" as used in Sections 86022(a), 86061(a) and 86065(a). The definition specifies that for the purpose of these regulations "law enforcement" means any officer, sheriff, or marshal of a city, state, or federal law enforcement agency.

Section 86022(a)

Specific Purpose/Factual Basis:

A grammatical change (Section to Sections) is made for clarity.

Section 86022(a)(7)

Specific Purpose:

This regulation is added to require that transitional housing placement program licensees include policies and procedures on when and how to involve law enforcement in response to incidents at their facilities in their plans of operation. The plan of operation must further explain how licensees will communicate these policies and procedures to staff, participants and participants' authorized representative(s).

Factual Basis:

Requiring transitional housing placement program licensees to include these policies and procedures in their plans of operation is a critical initial step toward meeting AB 388's intent that contact between youth and law enforcement as well as the delinquency petitions that sometimes result from them be reduced. The CCLD will be able to review these policies and procedures up front as well as assess their relative effectiveness once the methodology for determining what constitutes a "greater than average number of law enforcement contacts involving an alleged violation of a crime" is developed and facilities above and below the average are identified. This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

Section 86022(a)(7)(A)

Specific Purpose:

Section 86022(a)(7)(A) qualifies that the policies and procedures in the preceding regulation [Section 86022(a)(7)], shall not be interpreted to require a THPP licensee to take or be prevented from taking, any action that would endanger the health and safety of either participants or staff.

Factual Basis:

This regulation is necessary to ensure the health and safety of participants and staff in transitional housing placement programs by making clear that the policies and procedures required to be included in a facility's plan of operation pursuant to Section 86022(a)(7) do not have the unintended consequence of inhibiting calls to law enforcement in situations where such action is warranted to ensure health and safety. This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

Sections 86061(a)(3), (a)(3)(A) and (a)(5)

Specific Purpose:

These regulations are amended to change the phrase "working day" to "business day" for clarity and consistency.

Factual Basis:

These amendments are necessary to ensure that the terminology used in Section 86061 is consistent. Section 86061(a)(7)(A) was added in part to clarify what is meant by Health and Safety Code section 1538.7 when it requires specified incidents to be reported "upon the occurrence." These regulations apply to 24-hour care facilities, like group homes, that operate seven days a week, because of that, "working day" could be interpreted to include weekends or holidays. The Department has interpreted "upon the occurrence," following standard CDSS practice, to mean no later than the next business day, which is generally accepted as Monday through Friday, excluding holidays. This necessitates the changing of "working day" in Sections 86061(a)(3), (a)(3)(A) and (a)(5) to the more descriptive "business day" for clarity and for consistency with Section 86061(a)(7)(A).

Section 86061(a)(7)

Specific Purpose:

This regulation adds new requirements for the reporting of incidents concerning participants served by transitional housing placement programs involving contact with law enforcement as mandated in Health and Safety Code section 1538.7. The reference note is amended to include Health and Safety Code section 1538.7.

Factual Basis:

This regulation is necessary to incorporate new reporting mandates in Health and Safety Code section 1538.7(a) into existing transitional housing placement program regulations detailing incidents which licensees are required to report, as well as to clarify areas that the statute left open to interpretation for the benefit of both the licensees who must comply with this law and the CDSS employees who must enforce it.

Although Health and Safety Code section 1538.7(a) is repeated in part in Section 84061(i), the clarifications provided, as well as the need to present the requirements in their full context for the sake of clarity, ensure that the regulations does not needlessly violate the non-duplication standard in Title 1, California Code of Regulations.

While statute requires that initial reports on incidents entailing law enforcement contact with a child residing in the facility be made "upon the occurrence," this regulation interprets this term, following standard CDSS practice, to mean no later than the next business day. The requirement in Health and Safety Code section 1538.7(a) that licensees provide a follow-up report for each incident "at least every six months," is interpreted to require an individual report within six months of the incident's occurrence, rather than an aggregate report at six month intervals as the statutory wording could be read to allow. Further, the regulations specify that the follow-up report could be made at any time within six months of each incident, even immediately, if all outcomes and required information are known.

Health and Safety Code section 1538.7(a) requires that incident reports include several data elements, but tie the collection of these elements to the six month follow-up reports. This regulation interprets the statute as requiring those data elements known to the licensee at the time of making the initial report to be included at that time, and that such information need only be provided in the follow-up report if it has changed. In order to prevent unnecessary duplication, this regulation also clarifies that reports made in order to comply with the provisions of Health and Safety Code section 1538.7(a) satisfy any other existing regulatory reporting requirement so long as all required information is provided.

In requiring that THPPs and other specified facilities report incidents concerning a child in the facility involving contact with law enforcement, Health and Safety Code section 1538.7 directs that the follow-up report include "whether the incident involved an alleged violation of any crime described in Section 602 of the Welfare and Institutions Code by a child residing in the facility." Welfare and Institutions Code section 602, however, does not describe any crimes, but rather states that children under 18 years of age who violate any law, other than an age-based curfew law, are within the jurisdiction of the juvenile court, which may adjudicate them as wards of the court, unless they are 14 years of age or older and have committed murder or specified sex offenses, in which case they shall be prosecuted under the general law in a court of criminal (not juvenile) jurisdiction. Thus, the regulations further clarify that providers must include in the follow-up report whether the incident involved an alleged violation of any crime, other than an age-based curfew law, by a child residing in the facility, as referring to Welfare and Institutions Code section 602 does not provide adequate direction.

Section 86065(a)

Specific Purpose/Factual Basis:

"Subsections" is changed to "Sections" for internal consistency.

Section 86065(a)(1)(B)

Specific Purpose:

This regulation adds the transitional housing placement program's policies and procedures concerning when and how to involve law enforcement in response to an incident involving a participant residing at the facility as a required training topic for all THPP personnel.

Factual Basis:

This regulation is necessary to implement a change proposed by the workgroup convened by CDSS in keeping with Welfare and Institutions Code section 11469(f), which required consultation with specified stakeholders to develop performance standards and outcome measures that require group homes to implement programs and services to minimize law enforcement contacts and delinquency petition filings arising from incidents of allegedly unlawful behavior by minors occurring in group homes or under the supervision of group home staff.

As AB 388 subjected transitional housing placement programs to the reporting requirements in the bill, CDSS believes it is appropriate to extend some of the recommendations that came out of the aforementioned workgroup to THPPs. By ensuring that all THPP personnel is aware of, and expected to follow, the facility's policies and procedures on when and how to contact law enforcement, unnecessary calls to law enforcement should be minimized, which will meet the legislature's intent, as stated in Section 1 of AB 388, that the frequency of law enforcement involvement and delinquency petitions arising from incidents at group homes and other facilities licensed to provide residential care to dependent children be reduced.

This language is adopted in regulation pursuant to CDSS' broad authority to promulgate regulations for licensed children's residential community care facilities in Health and Safety Code section 1530.

b) Identification of Documents Upon Which Department Is Relying

Assembly Bill 388, Chapter 760, Statutes of 2014.

Recommendations from the AB 388 Stakeholder Workgroup, October 13, 2015.

Recommendations from the AB 388 Stakeholder Workgroup, November 16, 2015.

Recommendations from the AB 388 Stakeholder Workgroup, December 9, 2015.

c) Local Mandate Statement

These regulations do not impose a mandate on local agencies or school districts. There are no "state-mandated local costs" in these regulations, which require state reimbursement under Section 17500 et seq. of the Government Code.

d) Statement of Alternatives Considered

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Workgroups were convened in the development of these proposed regulations. No reasonable alternatives have been presented to CDSS for review.

e) Statement of Significant Adverse Economic Impact on Business

These regulations codify statute as well as implement proposals that came out of the discussions with stakeholders – including service providers – mandated by AB 388. Providers and their representatives reviewed and offered feedback to these regulations in draft form and did not express any alternatives to these regulations as presented or would cause a significant or detrimental economic impact to their businesses. Therefore, CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Economic Impact Assessment

In accordance with Government Code section 11346.3(b), CDSS has made economic impact assessments regarding the proposed regulations to implement AB 388. The CDSS has made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, as identified by the following:

Creation or Elimination of Jobs Within the State of California

As a result of the passage of AB 388, these amendments add and clarify the requirements of Health and Safety Code section 1538.7, as well as implement policies developed in consultation with child advocates, providers and other stakeholders intended to minimize law enforcement contacts and delinquency petition filings arising from incidents of allegedly unlawful behavior by minors occurring in group homes, THPP programs, community treatment facilities and homeless youth shelters.

The proposed amendments to regulations in this package will neither create nor eliminate jobs in California. They add components to existing regulatory requirements of specified children's residential facilities as a result of changes in statutory requirements and discussions with stakeholders. For this reason, CDSS does not anticipate that the proposed regulations will have an impact on the creation or elimination of jobs in the State of California.

Creation of New or Elimination of Existing Businesses Within the State of California

As a result of the passage of AB 388, these amendments add and clarify the requirements of Health and Safety Code section 1538.7, as well as implement policies developed in consultation with child advocates, providers and other stakeholders intended to minimize law enforcement contacts and delinquency petition filings arising from incidents of allegedly unlawful behavior by minors occurring in group homes, THPP programs, community treatment facilities and homeless youth shelters.

The proposed amendments to regulations in this regulations package will neither create nor eliminate existing businesses in the State of California. They add components to existing regulatory requirements of specified children's residential facilities as a result of changes in statutory requirements and discussions with stakeholders. For this reason, CDSS does not anticipate that the proposed regulations will have an impact on the expansion or elimination of existing businesses in the State of California.

Expansion or Elimination of Businesses Currently Doing Business Within the State of California

As a result of the passage of AB 388, these amendments add and clarify the requirements of Health and Safety Code section 1538.7, as well as implement policies developed in consultation with child advocates, providers and other stakeholders intended to minimize law enforcement contacts and delinquency petition filings arising from incidents of allegedly unlawful behavior by minors occurring in group homes, THPP programs, community treatment facilities and homeless youth shelters.

The proposed amendments to regulations in this regulations package will neither expand nor eliminate businesses currently doing business in the State of California. They add components to existing regulatory requirements of specified children's residential facilities as a result of changes in statutory requirements and discussions with stakeholders. For this reason, CDSS does not anticipate that the proposed regulations will have an impact on the expansion or elimination of businesses currently doing business in the State of California.

Benefits of the Regulations

These regulations should benefit California residents by improving the health and safety in the affected children's residential facilities and minimizing unnecessary interactions between law enforcement and foster youth for behavioral issues and minor infractions that could result in delinquency petitions. They will also facilitate the collection of data in order to determine, which facilities inordinately and/or inappropriately contact law enforcement to address incidents involving residents as well as clarify ambiguities in statute.

The regulations may also ultimately lead to ongoing cost savings in the criminal justice system by reducing the number of minors who transition from dependency to delinquency jurisdiction and may also improve worker safety by ensuring that the affected children's residential facilities have sufficient plans for when and how to involve law enforcement in response to incidents and by identifying facilities that use their local law enforcement agencies as a substitute for adequate staffing.

Documents Relied Upon

Documents relied upon in proposing these regulations: AB 388 (Chapter 760, Statutes of 2014); Recommendations from the AB 388 Stakeholder Workgroup, October 13, 2015; Recommendations from the AB 388 Stakeholder Workgroup, November 16, 2015; Recommendations from the AB 388 Stakeholder Workgroup, December 9, 2015.

g) Benefits Anticipated from Regulatory Action

These regulations will facilitate the collection of data in order to determine, which facilities are inordinately and/or inappropriately contacting law enforcement to address incidents involving residents. The regulations also require the facilities specified above to establish or enhance policies for contacting law enforcement and will ultimately help prevent foster children from being arrested and having charges filed against them due to minor infractions.

h) Statement of Specific Technology or Equipment

This regulatory action will not mandate the use of new specific technologies or equipment.